United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

Number 17,719

Doris L. Gardiner

Appellant

v.

United States of America

Appellee.

10

Appeal From The United States District Court For The District Of Columbia

BRIEF FOR THE APPELLANT

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(Appointed by the District Court)

QUESTIONS PRESENTED

1.

IS A STATEMENT OBTAINED FROM AN ACCUSED INADMISSABLE BECAUSE OBTAINED IN VIOLATION OF RULE 5(a) (b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

2.

IS A STATEMENT OF AN ACCUSED FREE FROM THE RULE OF EXCLUSION FOR VIOLATION OF RULE 5(a) (b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE WHERE THE INTERROGATING OFFICERS OBTAINED THE SAME IN PURSUIT OF A DUAL PURPOSE, AND MAY THE FACT OF ILLEGAL DETENTION IN VIOLATION OF RULE 5(a) (b) BE CONSIDERED A FACTOR IN DETERMINING THE VOLUNTARY NATURE OF ANY STATEMENT SO OBTAINED.

3.

UPON THE ISSUE OF ENTRAPMENT IS THE ACCUSED ENTITLED TO AN INSTRUCTION THAT THE JURY SHOULD ACQUIT IN THE EVENT THE GOVERNMENT AFFIRMATIVELY SHOWS NO PREDISPOSITION, BUT WHERE ITS EVIDENCE REVEALS THAT THERE WAS NO INFORMATION OR KNOWLEDGE THAT THE ACCUSED WAS ENGAGED IN CRIMINAL ACTIVITY PRIOR TO THE INDUCEMENT OF GOVERNMENT AGENTS.

4.

WHERE THE ISSUE IS ENTRAPMENT AND THE ONLY WITNESSES ARE EITHER AGENTS OR THE INFORMER, IS IT PROPER FOR A TRIAL COURT TO PREVENT ALL CROSS-EXAMINATION TO SHOW THE BACKGROUND LEADING TO THE SELECTION OF THE PARTICULAR INFORMER, AND TO CHARACTERIZE LEADING QUESTIONS ADDRESSED TO ADVERSE WITNESSES AS TESTIMONY.

5.

IS AN ACCUSED DENIED DUE PROCESS OF LAW WHEN HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IS DESTROYED BY THE CONCERTED EFFORTS OF NARCOTIC AGENT AND THE PRESELECTION OF COUNSEL BY THE PROSECUTOR.

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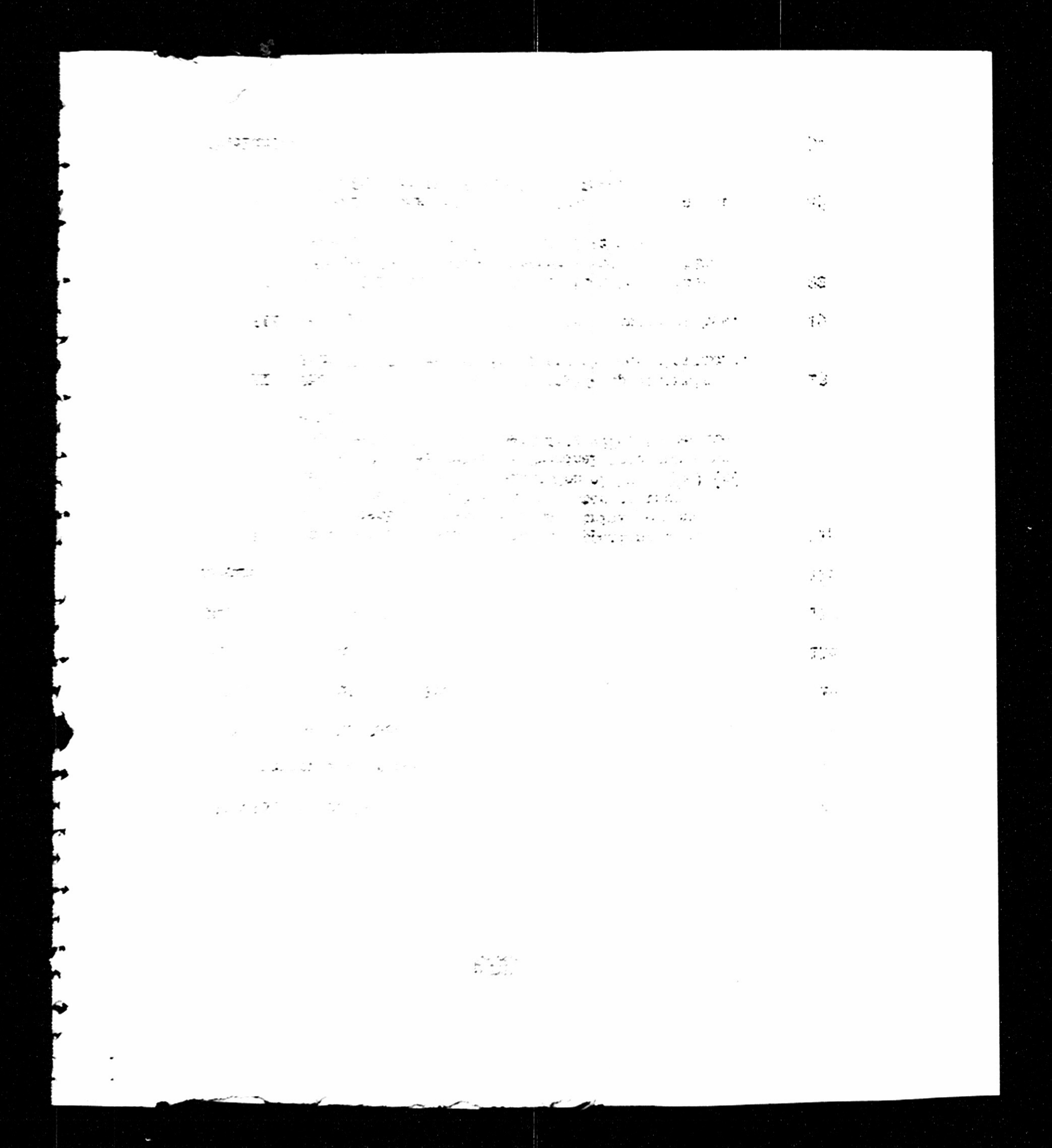

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Appeal From The United States District Court For The District Of Columbia

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BRIEF FOR THE APPELLANT

Jurisdictional Statement

Appellant, defendant below, was tried and convicted in the United States District Court for the District of Columbia upon an indictment in Criminal Case Number 289-62 charging multiple violations of the Federal narcotic laws. (Title 26 U.S.C. 4704(a), 4705(a); Title 21 U.S. C. 174.) Upon conviction of fifteen (15) counts in the indictment, the Court imposed a general ten (10) year sentence. This is an appeal from the said judgment of conviction. Appellant filed timely notice of appeal and the jurisdiction

of this Court is invoked under the provisions of 28 U.S.C 1291 and Rule 37 of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

1. Procedural History

On April 2, 1962, appellants Norman and Valeria Pannell were charged along with Charles Matthews, Ellen Phelps, Roland Henry, Clinton Johnson and Doris Gardiner in an indictment containing one Count of conspiracy to violate the federal narcotics laws and twenty-one Counts of substantive violations of 26 U.S.C. §§ 4704(a) and 4705(a) and 21 U.S.C. § 174 (J.A. 1). The Pannells were charged in Counts 8, 9 and 10 involving an alleged transaction on January 22, 1962. After trial by jury they were convicted on October 13, 1962, on these Counts; Charles Matthews was convicted on Counts 2, 3 and 4 and acquitted on Counts 5 through 22; appellant Doris Gardiner was convicted on Counts 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 as charged. Verdicts of not guilty were entered as to all defendants on the conspiracy count, and as to Ellen Phelps and Roland Henry on all counts of substantive violations with which they were charged (J.A. 236, 237). Appellant was sentenced to serve a term of ten (10) years on the verdict of guilty and filed timely notice of appeal. Partial transcripts were authorized for appellant Gardiner and this appeal was permitted to be prosecuted without prepayment of costs.

2. The Trial

The trial below extended over a period of approximately one calendar

month and a majority of the testimony, save the continuity questions was duplicated. This occurred because there was a hearing out of the presence of the jury on the admissibility of alleged statements made by the appellant to test their admissibility as a matter of law, and, when this was not accomplished, the same testimony was adduced so that the matter might be submitted to the jury as a matter of fact. For brief purpose here, the substance of the testimony is reflected without attempting to distinguish between the two, in as much as the issues will not require a separate approach.

PRELIMINARY PROCEDURE

At the outset appellant requested a continuance because her counsel had entered his appearance only four (4) days before trial. Explanation was offered that counsel representing her prior thereto had been relieved because of facts surrounding his appearance for appellant through the instigation of trial counsel for the government. (G.A. 1-14).[1/] Notice was given to government counsel four (4) days in advance suggesting that his prior pre-indictment activities in connection with certain statements obtained from appellant, and, his connection with the selection of the prior counsel, made it probable that he would also have to appear as a witness. The Court denied the motion and discounted the suggestion made with reference to the trespass on appellant's right to counsel and freedom from self incrimination from which the conduct of government trial counsel could not be conveniently disassociated. (G.A. 11).

1/ G.A. refers to Gardiner Appendix to distinguish it from the Joint Appendix utilized for certain portions of the extensive record.

TESTIMONIES OF THE WITNESSES

AGENT [redacted]

He testified that he made no plans with Jackson for his visit to appellant's home on the evening except to meet him at 8:15 P.M. (G.A. 146-149),that he understood that he would pose as Jackson's brother but that was because they had done it before. (Tr. Pg. 810, G. A. Pg. 49). He denied that he had been to her house before January 11, 1962 (G. A. 48), or had been a social guest. He was not surprised when Jackson said 'all narcotic transactions would be with him. (G. A. 151). He did not know what Jackson had said to appellant prior to their visit nor did he ever make inquiry. (G. A. 49-50). He did not have any suspicion or information that appellant was engaged in the narcotic business prior to his visit on the night of January 11. (G. A. 150-153).

The reason that Jackson became an informer was that he had something over his head, the same as the others. Efforts of appellant's counsel to develop the fact that the narcotic bureau had been investigating the "case" on trial prior to January 11, 1962, were prevented (G. A. 140-145). Witness testified that he never found out that his fellow agents were investigating the case just about the time that he first met Joseph Jackson, (Tr. Pg. 1382, 1383, G. A. 140 - 141), but cross-examination was frustrated even though he was shown to have sworn to an affidavit along with his fellow narcotic agents, (Defendant's Exhibit 7 for identification), in which they swore to this state of facts. (Tr. Pg. 1383, 1387, 1389, G. A. 141, 142-143.) He testified that he had a conference with fellow agents Reed, Henegan and Jones six or seven hours prior to the arrest of the appellant, and another about 1:00 P.M. (T. Pg. 1392, G. A. 146).

JOSEPH JACKSON

He knew appellant 5 years, they met in prison (R. Pg. 1610, G. A. 189), when he was serving time for robbery. That by his suggestion, mother and children visited with her at Ocoquan. That they exchanged gifts; he first became a "special employee" for the Narcotics Bureau in June, 1961. He was married (R. Pg. 1636, G. A. 205), and was undivorced. The car he was driving belonged to a Mrs. Savoy, a girl friend (R. Pg. 1624, 1627, G. A. 199). He visited appellant at her home, took her to work on one occasion and picked her up on others at her place of employment. He had been convicted of robbery, and possession of a dangerous weapon (R. Pg. 1671, G. A. 213). He had been questioned about a twenty dollar ($20.00) counterfeit bill just prior to his employment as informer.

He never knew, had, or give any information that appellant either had or was dealing with narcotics. He made arrangements to introduce Broadnax, a narcotic agent, to Doris and that the first thing he said was, "All narcotics transactions will take place with my brother" (R. Pg. 1617, G. A. 195)"Ricky". That at this time he had an income of $175,00 per week (R. Pg. 1620, G. A. 197). He didn't know that he told her about his employment (R. Pg. 1623, G. A. 198). He never knew anyone or associated with anyone who dealt in narcotics (R. Pg. 1617, G. A. 194-5). He first denied (R. Pg. 1628, G. A. 199), then admitted (R. Pg. 1631, G. A. 202), that he told Doris he was "in trouble in Virginia, and that he needed money." He didn;t recall telling herhis car was in "hock", but couldn't have hocked another person's car. He didn;t recall whether he had told Doris he needed $1,500.00. He said he was employed up until December 4, 1961 (R. Pg. 1636, G. A. 205).

He went to see her twice with Broadnax -- He was paid through January, 1962, for the initiation and development of the case against Doris Gardiner but only for the use of the Savoy automobile alone, as he didn't need the money. (Tr. Pg. 1672).

EVELYN E. ROBERTS

Sister of appellant --That during December, 1961, or January, 1962, she met Joseph Jackson and "Ricky" (R. Pg. 1661, G. A. 208), whom she saw at her home frequently, because of which their mother asked if Ricky was his brother's bodyguard. Received a telephone call in January, 1962, from Ricky. (The Court refused to permit the testimony of the conversation).

CARL H. MC INTYRE

Parole officer fo Jackson -- not permitted to testify as to his investigation of Jackson's visit to Occoquan.

DORIS L. GARDINER

She met Joseph Jackson while at the Reformatory for Women (Tr. Pg. 1678, G. A. 214); they exchanged letters and gifts; he sent her money and his family visited with her. His mother and daughters: He indicated he was separated and getting a divorce from his wife. He made an unpermitted trip to visit me while on parole under the name of Jameel Ahmad (R. Pg. 1679, G. A. 215).

She was released December 2, 1961. She had trouble getting a job (R. Pg. 1685, G. A. 220). Her first employment was December 27. She had been seeing Jackson about four (4) times a week (R. Pg. 1688, G. A. 223), and had received $100.00 in cash from him between her release and shortly after Christmas. She had not used or trafficed in narcotics up until the time she met "Ricky". Her salary at Gordon's was $1.00 per hour, about $33.00 per week net.

Their relationship became more serious. He pretended to be working as a mechanic, in a government garage (R. Pg. 1689, G. A. 224). In the latter part of December or early January he told her he was in trouble and had shot a man. He had to get $1,500.00, and he asked me to loan it,then asked me if I could get him some drugs. Despite thefact she disclaimed any

contacts to obtain drugs he endeavored to see her every day at work and at home (R. Pg. 1691, G. A. 226), and asked her if I was going to let him go to jail for $1,500.00 when I knew I could get drugs for him. He had discussed marriage with me. He started drinking. Ricky was presnet when he told me if I could get drugs for him, his brother would sell them in Baltimore for him (R. Pg. 1693, G. A. 227).

She first saw agent Hennegan with other agents on March 8, 1962, about 4:00 P.M., when he arrested her for narcotic violations (R. Pg. 1694, G. A. 228), at her door. They sea rched me for drugs and my mother said she would inform my parole officer, but they said he already knew. I aksed them who I was suppsed to sell drugs to and they said Thomas Broadnax. I told them I didn't know anybody by that name. We had no further conversation. Officer Hennegham was driving; I was in the rear between officers Jones and Reed. We went to the Narcotics Bureau at the Treasury Department. Officer Broadnax was not there.

They went to a cabinet and showed me the warrant, which I read. They first asked questions about Broadnax, whom they said was an agent who had been to my house and he had secured drugs (Tr. Pg. 1701). I denied their accusations until around 7:00 or 7:30 P. M. I had remained silent sometime. They told me if I wanted to make it light on myself I couldtell tham about it (Tr. Pg. 1702). They told me about my "ggod time" yet to be served, and that they had five sales "on me", and I could get 10 to 40 years on each one. I still did not make a statement (Tr. Pg. 1703). They then produced Broadnax, who said, "Doris, I'm sorry, I am a Federal agent." I asked him,"Why did Joe do this to me?" He told me its one of those things; Joe was jammed up-against the wall.

The agents then told me they didn't want me, they wanted someone else and I could lead them to those people, and if I did I wouldn't have to do anything but my back-up time. They said they would do everything they could

for me and they would speak to the United States Attorney (Tr. Pg. 1704). I did not sign anything that evening. I was there until about 10:30, when they took me to get a hamburger and then to the Women's Bureau(Tr. Pg. 1705).

On March 15, I saw Mr. Smithson. I knew I was going to meet him. The agents came to the jail, left me some money, and said they had arranged it.

Mr. Smithson told me he understood that I wanted to cooperate. He talked about my time; he was going to drop all charges but he couldn't do anything about my parole time, but he would speak to Mr. Rivers.

He asked me if I had an attorney. I told him I hadn't, as I had no money. He told me he could get Mr. Tinney for me. He told me he was the attorney in the Catfish turner case. He came in and Mr. Smithson introduced me and left the room. I told him they had questioned me, showed me some pictures and wanted me to cooperate with them and I had said I would. He told me to cooperate with Mr. Smithson and the Federal agents to the fullest extent. I also talked to Mr. Davis, my parole officer. He told me I was in trouble and he understood I was cooperate. I told him I had no other choice.

Messrs. Reed and Henaghan came back and said Exhibit 15 was not complete and Mr. Smithson wanted more data concerning the case. They conferred with me for 4 or 5 hours, until about 5:30 or 6:00 P. M. They brought some papers for me to sign. I signed them all. Messrs. Henaghan and Reed visited me afterwards at the jail and told me I would have to go before the Grand Jury. I was crying on the day for Grand Jury. Mr. Reed sent for Mr. Smithson; he came down to the jury room and told me he was going to have Mr. Acheson write a letter to the Parole Board so that they would take the detainer off of me and he

would have my bond cut. My bond was cut after I testified. Mr. Tinney came over. Later Mr. Reed and Mr. Morrison came over to the jail. They told me they couldn't do anything and I would have to plead guilty to the sixth count of the indictment and I wouldn't get over 10 years.

Officer Broadnax came in on March 8, I was quite upset, it was more than tears. One of the officers sent for some sodas. I took some aspirin and a tranquilizer I had in my pocketbook (J.A. 91). I left these at the Women's Bureau.

They started questioning me again in about fifteen or twenty minutes. They said they had been watching me for days. They showed me pictures of Roland Henry and Ellen Phelps (J.A. 93). They also said they would help me if I cooperated. They said they didn't want me, it was some other people that they had been investigating. They named them. They wanted me to involve the three people named. I said I didn't know Roland Henry, but I did know Phelps and Matthews (J.A. 95). After this I asked them what they wanted me to do and then "cooperated" (J.A. 97). The questioning stopped at about 9:45 (J.A. 98). That I saw Mr. Smithson for the first time on March 15, 1962 in the presence of Agents Reed and Hennegan at which time he said he had been informed that I had made a statement and wanted to cooperate with the government by teing a government witness, (J.A. 99). He also said if I decided to cooperate and become a government witness he would drop all charges, but he said the statement I had made was not enough and he needed more details. I talked to him about by 'good time'. He also asked me if I knew Mr. Tinney who had worked on the Catfish Turner case and since I didn't have an attorney he was going to arrange for me to talk to him, which he did. (Tr. Pg. 1735).

The talk with Mr. Smithson lasted about half hour, then I talked to Mr. Tinney who told me to cooperate with the agents and Mr. Smithson to the 'fullest extent'.

Mr. Smithson came back into the room and asked me if I was satisfied and I told him Mr. Tinney told me to 'go along'; he left me with the agents who questioned me again from about 11:00 A. M. to 3:00 P. M., I was given some food also (J.A. 101), I signed a stack of papers, which I also initialled where I was told typographical errors appeared; I did not read the papers. This was the first time I had signed anything. (J.A. 102).

Mr. Tinney came to the jail later and told me I would have to testify before the Grand Jury (J.A. 102). I had several attorney's attempt to visit me at the jail but Mr. Tinney had written a letter to the jail authorities not to permit me to have such visitors unless I had first requested them. (J.A. 103). When Agents Reed and Hennegan visited me at the jail I told them I wasn't going to testify because my detainer had not been lifted. They got in touch with Mr. Smithson and he met me at the door to the Grand Jury room and promised to get my bond cut and speak to the parole officers. I then went in and they used the statement I made on March 15 to question me by.

THE RECORDINGS

The Court recessed to permit the hearing of a tape of the conversations had between appellant and the narcotic officers, (Tr. Pg. 1451, 1454). Motion to strike statement of appellant overruled again, (Tr. Pg. 1465). The recordings were ruled to be unintelligible, (Tr. Pg. 1465, G.A. 164)

JOHN E. THOMPSON

He was in the Narcotic Bureau when the agents brought the appellant in and he was there with a recording machine by pre-arrangement with the other agents, through radio communication (Tr. Pg. 1470, G.A. 158). He had placed the microphone in Agent Hennegan's desk. Attempts by appellant to develop what went on in the first thirty five minutes through witnesses who listened with a receiving head-phone set were rebuffed, (Tr. Pg. 1480-1484, G.A. 163/4).

FREDERICK SMITHSON

He was one of the attorneys selected by his office to supervise and authorize the issuance of warrants sought by the Narcotic Bureau among other enforcement agencies in the District, and that he had no memoranda or recollection whether he did or did not perform that function in this case. (Tr. Pg. 1181, G.A. 100). He had been alerted to the fact that the agents had secured a statement from appellant on March 8, prior to the 15th and more than likely on March 9. He was also informed that appellant wanted to become a government witness and that 'obviously' the statement of March 8 (Exhibit 15, J.A. 78, Tr. Pg. 1288) was not as full in preparation for any case 'he' might consider for submission to the Grand Jury. (Tr. Pg. 1192, G.A. 186). Witness testified that he was 'generally' familiar with the circumstances surrounding and methods used in the taking of appellant's statement on March 8 on the morning of March 15. (Tr. Pg. 1193, G.A. 107/8). That he did not have a discussion with appellant about dismissing all the charges before Mr. Tinney talked to her (On Direct, G.A. 109-112), and he did have such a conversation with appellant (On Cross Examination by Mr. Hantman, Tr. Pg. 1207/8, G.A. 114/5) BOTH BEFORE AND AFTER Mr. Tinney came in. When he told her

he could not and would not he meant that he thought it was inappropriate (Tr. Pg. 1208, G.A. 115). He had made arrangements for Mr. Tinney to 'speak' to appellant before his conversations with appellant on March 15, and before he actually was called in to see her he knew that she had no money to hire a lawyer, (Tr. Pg. 1208, G.A. 115), that he had told Mr. Tinney of her poverty before Mr. Tinney had talked to appellant on March 15. He didn't remember whether he had recommended a reduction in her bond, (Tr. Pg. 1206, G.A. 114), or had talked with her about it. His recollection of the extent of his conversations with appellant prior to the time Mr. Tinney put in his appearance (on Direct Examination)(G.A. 113) consisted merely of identifying himself, warning her and asking her to speak to Mr. Tinney.

WILLIAM A. TINNEY, JR.

He met appellant for the first time in the Courthouse in an anteroom off of the District Attorney's office after receiving a call from Mr. Smithson (Tr. Pg. 1226, G.A. 125), that he first saw Mr. Smithson in his office, but he wasn't clear whether appellant was present, or in what office he saw either or both of them. He didn't know whether appellant had or had not signed some papers when he had arrived (Tr. Pg. 1230, G.A. 128). Appellant never signed any papers in his presence, but he 'gleaned' that she was about or had signed some. (Tr. Pg. 1232, G.A. 129). He didn't recall how long appellant had been in custody because he didn't anticipate 'this' development. (Tr. Pg. 1233, G.A. 130). He told appellant that it was his considered advice (which he used frequently) that she was to sign any statements 'she felt free to sign' about her participation and that of anybody else. (Tr. Pg. 1237, G.A. 132).

testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section. Added July 18, 1956, c. 629, Title II, Sec. 201, 70 Stat. 574.

Title 23, Section 110, D. C. C.

Section 23-110. Discharging joint defendant during trial in order to be witness - - - - Bar to another prosecution.

When two or more persons are jointly indicted the court may, before a defendant has gone into his defense, direct any such defendant to be discharged, that he may be a witness for the United States. An accused party may also, when there is not sufficient evidence to put him upon his defense, be discharged by the court, or, if not discharged by the court, shall be entitled to the immediate verdict of the jury for the purpose of giving evidence for the other parties accused with him; and such order of discharge in either case, equally with the verdict of acquittal, shall be a bar to another prosecution for the same offense. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, sec. 921.)

FEDERAL RULES OF CRIMINAL PROCEDURE

RULE 5. PROCEEDINGS BEFORE THE COMMISSIONER

(a) Appearance before the Commissioner.

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

STATUTES AND RULES INVOLVED

Title 42, U. S. Code Sections 1985 (2) and (3):

(2) Obstructing justice; intimidating party, witnesses, or juror.

> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment or indictment of any grand or petit juror in his person or property on account of any verdict, presentment or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; . . . . . .

Title 18, Section 1406, U.S.C.

Section 1406. Immunity of witnesses.

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of - - - -

(1) any provision of Part I or Part II of subchapter A of Chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of Section 7237 of such Code,

(2) subsection (c), (h), or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., Sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U.S.C., Sec. 184a), is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from

(b) Statement by the Commissioner.

> **The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.**

SUMMARY OF ARGUMENT

Appellant was arested by virtue of a warrant issued by the United States Commissioner, the application for which was 'pre-audited' for substance by one of two assistants in the United States Attorney's office. In defiance of the directions on the face of the warrant and Rule 5(a), the narcotics officers leisurely arrested appellant, and, after office hours, purposely interrogated her at their office to secure a statement. The prosecutor although informed of the process and its product, he nonetheless utilized the statement in proposing to appellant, an indigent, that she become a 'government witness.' Having secured her consent, he suggested her need for counsel and made available to her an attorney whom he had pre-selected. His total contribution, in the form of advice, removed any hesitance and insured her confirmation and expansion of the original self condemnation. This was unrelieved, in point of time, up to the door of the grand jury room.

While the officers denied making any promises to the appellant, never the less, from their testimony, and of the prosecutor, it appears that estimates of her prospective punishment, if she should choose not to 'cooperate' by self condemnation, ranged from 40 - 200 years imprisonment. Their alternative course was punctuated with conversations about dropping all charges,

reduction in her bond, the benefit of the good offices of the U. S. Attorney about her unserved 'good time' and their disinterest in her as an objective of enforcement.

Appellant's statements, were all involuntary as a matter of law and each eas the product of the illegal detention and captivity.

II

Appellant, while in prison, met and became infatuated with a fellow inmate at a neighboring institution. His release on parole antedated hers by six months. They ostensibly renewed their affair when her 'good time' started, but unknown to her he had been apprehended for a counterfeitting charge and as the better part of valor 'consented' to become an informer in June, 1961, shortly after his release on parole. As luch would have it, the narcotics officers were then in the throes of an unseccessful investigation of some co-defendants' narcotics activities when they acquired the informer. This investigation uneventfully simmered until appellant became reunited with her boy friend. This relationship, deceitfully nursed, was used as a lever to embroil appellant in the narcotic traffic, although neither the informer or the agents had any knowledge or information that she had such a predisposition. Her conduct, then, in all aspects, was the product of this entrapment and not acceptable or punishable as a crime under the narcotics laws.

III

The appellant was handicapped in her defense of this prosecution by untoward restrictions which limited the full development of the entrapment defense and of placing the narcotics officers and the prosecution in the fact mosaic so that a full picture and reach of their equivocal conduct

might be appraised in light of the defenses offered.

IV

Since the principal defenses of appellant were centered around entrapment and the invalidity and inadmissability of her several statements, the denial of prayers offered by appellant, and the absence from the Court's charge of pertinent aspects of the law treating the theory of appellant's defenses as developed in the evidence, was reversible error.

V

The concerted efforts of the narcotics agents and the prosecutor were designed to and did eliminate even the possibility that appellant could enjoy the assistance of counsel at any stage of the criminal proceedings, and indiscriminately compelled her to be a witness against herself, whether at the narcotics office, in the prosecutor's office or the grand jury room.

STATEMENT OF POINTS

I Statements obtained from the appellant were inadmissable against her in a trial because they were involuntary as a matter of fact and were obtained in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and in deprivation of the appellant's right to obtain counsel.

II The defendant was entrapped as a matter of law.

III The trial Court erred in denying appellant's instructions as to entrapment and her statements.

IV The trial Court erred in limiting the cross-examination by defense counsel and permitting improper latitude to government counsel.

V Appellant was denied due process of law and of her right to the advice of counsel.

ARGUMENT

I

THE STATEMENTS OBTAINED FROM THE APPELLANT WERE INADMISSABLE BECAUSE THEY WERE OBTAINED (a) IN VIOLATION OF THE PROVISIONS OF RULE 5(a) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AND 9(b) THEY WERE NOT VOLUNTARY.

The appellant was arrested on March 8, 1963, between 4 and 5 P.M., and was taken directly from her home to the Narcotics bureau located in a government building at 12th & Constitution Avenue, N. W. Arrangements had been made for one of the agents concerned in the investigation, (Tr. Pg. 1470, G. A. 158), to record conversations with the appellant. The agents knew of the commissioner and the warrant under which they acted directed them to take forthwith before him. They wanted to cooperate with the police and obtain information for a fingerprint card and arrest sheet, but also to question appellant. During the course of questioning for a period of approximately three (3) hours, they suggested to her that she could receive 10 to 40 years for each of five (5) sales, (Tr. Pg. 1516, G. A. 175). They repeatedly solicited her cooperation, (Tr. Pg. 1516, G. A. 176) during the course of the questioning. Also mentioned was her unserved parole time, along with suggestions that her cooperation would be brought to the attention of the United States Attorney and the parole board. The price of the statement which they wanted her to give was the statement itself. Other testimony developed that one Joseph Jackson, a paroled convict, suspected of parole-time counterfeiting, became an informer for the narcotic agents, in June, 1961, and had been a boy friend and intimate of appellant during her confinement and his, (Tr. Pg. 1610, G. A. 189). He again cultivated her after her release and after his employment as an informer. Just prior to bringing in a narcotic agent, he had informed appellant he was in serious difficulty and needed money. Although he had no information that appellant had or was involved with any narcotics in any wise (Tr. Pg. 1617, G. A. 195) and the

narcotic agents had no such information (Tr. Pg. 762, G. A. 195). He induced the appellant to obtain drugs from sources which the narcotic agents had long been investigating before her release from prison (Tr. Pg. 1569, G. A. 180m), he brought to this end in Agent Broadnax, posing as his brother and 'announced -all narcotic transactions will be with Ricky'. During the questioning of appellant and at a critical time, A[b]ent Broadnax was revealed to her in true identity, after which appellant acceded to their 'solicitation' and made a statement.

THE STATEMENT OF MARCH 8, 1962 WAS INADMISSABLE BECAUSE IT WAS OBTAINED IN THE VIOLATION OF RULE 5 (a),(b).

The transportation of appellant to the office of the narcotic bureau for the evident purpose of obtaining a statement from her rather than to take her to a commissioner or a magistrate was a knowing and flagrant violation of the Rule 5 of the Federal Rules of Criminal Procedure. Why it is possible in this day and time to turn deaf ears to the clear language of this Court and other Courts that have repeatedly and continuously pointed out the duty of an arresting officer/ is puzzling. Mallory v. U. S. 354 U. S. 449; also see Mitchell vs. U. S. (1) _____ U.S. Apps. D. C. _____, #17906, Feb. 7, 1963 And before Mallory, Cf. Watson v. U. S. 98 U.S. Apps. D. C.,221, 226, 234.

THE STATEMENT OF MARCH 15, 1962 WAS THE PRODUCT OF THE CONTINUED VIOLATION OF RULE 5 (a), (b)

Having been traduced on March 8, 1963, appellant was no match for the continuation of the wrongful inquisition by the United States Attorney. Without the interruption of conference with counsel of her choice, there was

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1/ It would seem on principle that the course followed by the prosecutor in the case at bar has none of the attributes required By Rule 5(a) or (b)

no relief against the reach of the evil which Rule 5 (a) was designed to correct. While it is true that she consulted with a Mr. Tinney, the unusual manner in which he appeared in this cause - having been preselected by Mr. Smithson, the assistant U. S. Attorney whose duties is to counsel the narcotic officers who had obtained the March 8, statemnt-afforded her no haven. It appears that on March 15, 1963, Mr. Smithson had the appellant brought up to his office from the jail and after conferring with her, suggested Mr. Tinney as her 'counsel'. His rather informal talk with appellant and his rather remarkable advice to her, can hardly be considered generative of 'that highly confidential, demanding personal faith and confidence' implicit in the relationship of attorney and his client. In Re Mandell 69, Fed. 2nd. 830, 831. The dissent in Killough v. U. S. _____ U.S. Apps. D. C. _____, #16,398, decided October 4, 1962, at least required that the appellant 'be advised of her rights', or warned, Goldsmith v. U. S. 107 U. S. Apps. D. C. 305, 277 Fed. 2nd. 335. The interposition of counsel, personally selected by a prosecution officer, for an indigent accused tethered at the door step of his interrogation chamber, actually prevented the receipt of 'judicial caution'. While it may be assumed that appellant 'let the cat out of the bag' on the night of March 8, the process employed to 'give her counsel, and 'Jacksonize' her March 15 statement not reprehensible, is at least not in keeping with the highest traditions usually attending the administration of the criminal law. The explanation offered, despite the availability of the Public Defender's office, one flifht up in the Court house, is unrealistic. This statement also was designed to circumvent the consequences of the flagrant violation of the Mallory-Upshaw-McNabb rule and 'stems' so directly from the illegally procured first statement as to

warrant similar rejection. Killough v. U. S., supra; Naples vs. U.S. 113 U. S. Apps. D. C. 218, 302. Fed. 2nd. 618; prescribed a criterion which the case at bar cannot measure up to or meet. Even as in Killough, supra, appellant was turned over to her tormentors of March 8. Perhaps, if the reaffirmation doctrine is to breed this type of progeny, it would best be put at rest. Here, an assistant U. S. attorney baldly proposes that the disparate victim 'give more details' as an evidence of her cooperation in connection with, a palpably invalid confession.

THE GRAND JURY STATEMENT

After the March 15 statement, and by virtue of the 'advice' of Mr. Tinney, appellant was informed that she would have to appear and testify before the grand jury. (J. App. Pg. 102). Meanwhile attorneys had been seeking to visit appellant in the jail and Mr. Tinney wrote a letter directing the jail officials not to permit attorneys to visit appellant unless appellant herself had requested them[1/] (J. A. Page 103). Appellant demurred at being 'a witness and a defendant too", however, Mr. Smithson met her at the door to the grand jury and promised to reduce her bond and have the United States Attorney write to the Parole Board so as to remove an obstacle to her being admitted to bond. (J. A. 104). He also secured Mr. Tinney to accompany her to the U. S. Commissioner to accomplish the reduction in bond. /Appellant then went in and repeated the substance of her March 15 statement, a copy of which she was shown in the grand jury room./ It would appear that the traduction of appellant's rights never abated even to the door of the grand jury room. Until appellant reached her seat in the trial of this cause, the concerted efforts of informer, agent, prosecutor and legal volunteer insulated her from any respite from continual self-condemnation. Her testimony before

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1/ In light of appellant's poverty and imprisonment it was likely that she could command legal attention or exercise much choice save thru the importunities of friends, or relatives.

the grand jury was employed at trial, over her objection, by the prosecutor who laid its predicate (J. A. 130-135). Your appellant says that the pressure upon appellant had not been relieved and this last and ultimate statement was also invalid and inadmissable.

THE STATEMENTS WERE INADMISSABLE IN AS MUCH AS THERE WAS NO EVIDENCE WHICH SHOWED THEM TO BE VOLUNTARY

In order to properly appraise the issue as to the voluntary character of the statements made by the appellant, it is necessary to place the defendant in the circumstances in which she found herself. It is to be assumed that the public is not unaware that enforcement officers who arrest a citizen should take him to the nearest magistrate in keeping with the rule announced for the protection of an accused. Porter v. U. S. 103 U. S. Apps. D. C. 385, 393, 258 Fed. 2nd. 685, 693. To take a female prisoner, after dark, to a government building after office hours, rather than to a magistrate sets the stage for evaluation the temper of the inquisitors. (Tr. Pg.). To prate to her about 'cooperation' amid suggestions that she might receive 10 to 40 years on each of five 'sales', in addition to the United States Attorney about her 'cooperation', and to the parole board, if not more, is at least indicative that the forthcoming statement was achieved in a 'bargaining atmoshpere', Crawford v. U. S. 219 Fed. 2nd 207. It would be analomous if this atmosphere, achieved at night in an office building, empty of its usual complement of workers, could give rise to a confession of guilt from an indigent accused, without counsel, impermissable at the preliminary hearing so studiously avoided. Woods v. U. S. 75 U. S. Apps. D. C. 274, 280, 128 Fed. 2nd. 265.

The further statement of March 15, 1963 in which the Federal Narcotic Agents, executing a federal warrant, present a statement to a federal prosecutor who, oblivious or inured to its frequent violation, embrace the

tainted product and dashed the mirage of hope of a hapless miscreant, by expanding upon it, so as to add 'conspiracy' to the 10 to 40's already in view. While no case appears within convenient reach identical with the one at bar, this Court has admonished that an accused should have the right to counsel as provided by the Constitution, and this implies that he should have an opportunity to select such counsel, or have the Court furnish the same. Lee v. U.S., 98 U.S. Apps. D.C. 272, 274, 235 Fed. 2nd. 219. The right to counsel cannot be diluted so that any prosecutor, for reasons of his own, may privately select some willing friend and satisfy the constitutional command. The promise to speak to the parole office continues and the outdone prisoner, resolves, that there is nothing else to do. Nor was the relief in sight before her grand jury appearance, there was dangling before her eyes the prosecutor's promise at the door to the grand jury room. The evidence shows that the appellant saw her prrole officer,[1/] the narcotics officers, the United States Attorney and her 'attorney' all with the same chorus. This formidable array of solid citizens presented a bulwark which she was ill-equipped to scale. Their unstinting consistent suggestion, warning, advice and counsel fixed self-incrimination in her mind as if that course were the one of choice. It would seem that in the face of this seeming common judgment of people whose positions she could but respect, the last vestige of a will to resist melted away.

1/ It appears that this parole officer is at present under indictment for alleged sale of his official services.

It is submitted that the statements obtained from the appellant were obtained by inducing her to make them thru employment of procedures rife with violations of laws designed to protect her. Her inquisition was conducted in a bergaining atmosphere, psychologically contrived to create spiritless despair, consummated by depriving her of any real access to counsel. The statements obtained in this manner are not reliable and could not be voluntary.

The whole course of conduct thru the third statement before the Grand Jury was contrived to overbear the appellant's will and with the weight of the prestige of the office of the United States Attorney thrown in the balance, appellant was convinced that the agents, the United States Attorney could do with her as they willed. Lynumn v. State of Illinois 83 S. Ct. 917, 920. Even though there was sufficient evidence, apart from the coerced statements, to support the conviction, the admission into evidence, over objection of the statements violates the Due Process Clause of the Fifth Amendment. Compare Payne v. Arkansas, 356 U.S. 560, 2 L. Ed. 2nd 975 .

II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S INSTRUCTIONS AS TO ENTRAPMENT AND HER STATEMENTS

The appellant submitted seven (7) instructions which, in her view, were calibrated to meet the issues drawn by the evidence. The appellant made no effort to controvert the fact that on five occasions she turned contraband drugs over to a narcotic agent, operating 'undercover', in exchange for currency furnished by the United States government. She contended that she was induced to particpate in these transactions, which she had not contemplated and for which she had no predisposition, except that which generated from the concerted persuasion of the informer and the narcotics agent. She also claimed that three (3) statements were extracted

from her through the device protracted questioning, beginning in violation of Rule 5(a) of the Federal Rules of Criminal Procedure, frightening her at intervals amid bargaining suggestions by the narcotic agents, all of which was consummated in the subversion of her right to counsel by the United States Attorney, so as to utilize, expand upon and bring into useful fruition her first illegal statement.

(a) Entrapment

Appellant's instructions 1, 4 and 6 were designed to apply the law of entrapment to the situation developed by the facts from appellant's theory. It was clear what her view was from the attempted and proffered opening statement of her counsel. (G.A. 14-33.) It appears in the evidence that neither the informer nor the narcotic agents had knowledge or information that the appellant was engaged in or concerned with the narcotics prior to January 11, 1962, (Tr. Pg. 1617, G.A. 150, 153, 195), and they first mentioned it to her either from their testimony,(G. A. 151), or that of the appellant, (Tr. Pg. 1691, G. A. 226), and they supplied the money for the transaction involved. Furthermore, while the narcotics agents merely took advantage of the 'ground-work' of their informer, their conduct is inseparable from the point of view as to whether entrapment is concerned. Hansford v. U. S. 112 U.S. App. D. C. 359, 303, Fed. 2nd 219. Under the circumstances just outlined it then became the obligation of the government to show that the appellant was predisposed to commit it and that the agents merely provided a convenient opportunity. No such instruction was given by the Court although appellant's instructions request it. Sherman v. U.S. 200 Fed. 2nd. 880, 883. While the words in the Court's instructions are lifted from approved language, here they are equally consistent with the interpretation that it was appellant's sole obligation to show entrapment, plus indisposition to engage in the prescribed conduct. This is not the

law. U. S. v. Moses, 220 Fed. 2d. 166. The Court's attention was called to the state of the evidence and the above view of appellant all during the course of the trial and appellant's motions for a directed acquittal.

As quoted by the trial Court, the opinion of the Supreme Court in Sherman v. U.S. 356, 369, declares that government agents may 'use stratagem and artifice' to catch those engaged in the narcotics trade, and this portion of that opinion is properly included in the Court's charge. Without translation into the facts here, however, it would have no application if such activity of the agents is directed to catch those not so engaged. The Supreme Court did not mean that 'artifice and stratagem' were permissable instruments when the end product is to prod a person not then in the trade or even suspected to be, to thereupon start into narcotic criminal activity. Only from the lofty perch of indifference does the condemnation of those who too easily succumb to the wiley blandishments of unprosecuted criminals, leashed to police masters, become synonymous with the approved counter-measures of outraged justice. But no one, as yet, has suggested that government money may be employed so that we may really find out how many of out weaker citizens we can convert into criminals through artifice: and stratagem. Be this as it may, it would be nonetheless immoral for the government to foster or promote such activity. It is the sense, and spirit, of the Sherman case that the government may use devices to uncover the camouflage employed by criminals engaged in the narcotics racket. It is another to initiate the activity, previously non-existent, and lead the unwary, weak or acreless to a Federal penitentiary. It is in this sense that the Court's charge is misleading. Compare Childs v. U.S. 105 U.S. App. D. C., 342, 267 Fed. 2d 619, 620.

In the case at bar, without apology, the government employed Joseph Jackson as an informer because they knew he was associated with people in the

drug trade, (Tr. Pg. 1556, G. A. 180q, 180i), despite his denial of such association. (Tr. Pg. 1617, G. A. 194.) Between the two (2) versions his success at such association is other cases favors the government view. All during this time, however, appellant was still incarcerated. Without inquiry about or ascertainable interest in his 'ground-work', (Tr. Pg. 1393, 1574, G. A. 146, 180q), they apparently coerce, and/or allow him to intrude into the home of any unsuspected and unsuspecting citizen, be he prince, pauper, guilty or innocent, or what have you, and prepare the grist for their mill.

Other portions of the charge of the Court contain general statements that, in appellant's view, are inapplicable to the case on trial. The following excerpt is typical: (J. A. Pg. 219, Case No. 17,745):

> "You are instructed that if an officer puts into the mind of someone else that he should commit a crime when that idea was not in that person's mind until it was so placed and and that person commits the crime although he had no pre-existing disposition to do so, he cannot be convicted <u>if the officer who placed that thought into his mind does it for the purpose of entrapment.</u>" (Emphasis supplied.)

While this language is capable of an interpretation consistent with applicable and controlling law, we must assume that the jury would know, without instruction, that "officer" includes "informer", as appellant's specific instruction provides. Here the narcotic officers disclaim any knowledge of what their informer told the appellant, made no inquiry about it. To restrict the thrust of the charge to "the officer" where so much emphasis was placed on the conduct of their informer, while denying the specific point set forth in appellant's prayers withaws that issue from the jury. In the case at bar it is plain that one theory of appellant's case, supported in the evidence, was that she was only a pawn in their hands to catch the larger quarry they had been after so long. The er- r becomes more prejudicial when the Court further charged:

> ".... In other words, there is no entrapment if an officer of the law induces a person to commit a crime not for the purpose of entrapping him but for a purpose personal to the officer and not connected with law enforcement."

It is difficult to see what application this has to the case at bar. Appellant had considerable difficulty in developing this aspect of her defense and the charge virtually killed all chance of an acquittal, if any remained. It is clear that there was evidence that the informer suggested that she contact Matthews and/or Phelps when he wanted the narcotics allegedly to get money to keep him out of jail. (Tr. Pg. 1691, G. A. 226.) Testimony also developed that the agents said they didn't want appellant, they wanted the defendants Matthews, Phelps and Henry. (Tr. Pg. 1125, 1129, G. A. 84, 87.) The whole theory of the government's case was that a conspiracy started by the other defendants before appellant was released from prison. It would appear that this part of the charge has no justification in the evidence and its inclusion emasculates one of the facets of her defense, developed by the evidence, consistent with appellant's claim of entrapment. This argument is only sound if the jury assumes that "officer" includes "informer". It is difficult then to tell where the error lies. If we assume in the charge that "officer" includes "informer", then the portion of the charge first quoted is sound, but the latter quote is error. If we do not include "informer" then the first is bad and the latter quotation portion is impossible to justify or understand.

(b) The Statements

The charge of the Court leaves it to the jury to determine whether the statement of March 8, was involuntary. It excludes even any reference to the statement of March 15, 1962, about which the government cross-examined her through her testimony before the grand jury.(Tr. Pg. 1778, Jt. A.125) Appellant's instruction as to the involuntary character of all statements was

restricted to Exhibit 15, (the March 8 statement). The Court's preliminary admonition precluded counsel from advancing other grounds for the exclusion of the statements. (G. A. 14-33.) For the first time we deal with a confession in a narcotic's case. As usual case is so rife with proof, the forbidden drug, agents following agents, photos, statutory presumptions galore, that the very appearance of a confession in a narcotics case marks this one. It is probably incontestable that appellant's record, the eight agents, the proof and presumptions at hand would insure conviction, everything else being equal. There certainly was not any need for proof of the alleged sales upon which appellant's ten (10) counts rest. There was only one reason for diverting her from the U. S. Commissioner to the rather extended nocturnal tete-a-tete in the offices of the Narcotic Bureau. This statement, a composition of their suggestions, condemns the other defendants who eluded the grasp of the bureau for a long time. It also took a little time to over-bear their quarry. Suggestions of 50 - 200 years, promises to speak to the U. S. Attorney and her parole board about her "cooperation" set the stage for the revelation that her lover had duped her. The conduct of the Assistant U. S. Attorney, who knew, or should have known of the format, squeezed from appellant more details, under the aegis of the good offices of an accomodating legal acquaintance. Her futile anguish at the grand jury door found her insulated from any surcease save the pittance offered by her tormentor at the grand jury door.

The Court submitted to the jury the issue of voluntariness as if the jury's duty was to determine if appellant had succeeded in showing that it was untrue, thus involuntary, in as much as:

> "Ordinarily a person does not admit that she has committed a crime unless that admission is true. But the situation is otherwise if the confession is obtained by force or threats or by the exercise of any undue influence or as the result of promises. If a confession or admission is obtained by such means, it must be rejected and disregarded by the jury. The rule is based on good reason. Human experience has shown that it is not uncommon for persons to admit

> a crime that they have not committed if they are under mental or moral pressure, ... (J.A. case #17-745, page 192.) (Emphais supplies)

If this is the criterion then the appellant's case against the admission of the statement was lost before the contest started. Her defense of entrapment entails an admission that she committed the acts charged in the substantive counts. The jury should not have been instructed that if they could find that the confession was a true recital of facts that the reason for the rule of exclusion would be defeated by rejecting the confession. Similarly, the government's duty to show that it was voluntary escaped judicial mention. Appellant's requested instruction #5 more clearly directs the jury's attention to the factor's which they should consider in determining whether the statements were voluntary rather than to an engagement to determine whether the statements were in fact voluntary. (G. A. 231.) The Court rejected this approach which appellant proposed in Instruction #5. The instructions of the Court were long and were typed up and submitted to the jury when they found that they could not remember them. (J.A. 184-231). All in all it does not appear that they were realistic in light of the unprecedented spectacle of the government's own making. Watson v. U. S. 101, U.S. Apps. D. C. 350, 352, 249 Fed. 2nd. 106, Naples vs. U. S. 113 U.S. Apps. D. C. 281 ,307 Fed. 2nd. 618. Spano v. N. Y., 360, U. S. 315 . To ignore the other statements, all the fruit of the first, and restrict their consideration, in this inquiry, to Exhibit 15 (the first statement) is empty of what small benefit the prosaic charge contained.

III

THE APPELLANT WAS ENTRAPPED AS A MATTER OF LAW

The appellant met one Joseph Jackson while they were both inmates of prisons in the District of Columbia area; she was incarcerated for a narcotic

offense (Tr, Pg. 1610, G. A. 189), and he for robbery (Tr. Pg. 1671, G. A. 213). They both occupied positions of trust, she in recreation and he as a movie operator. Their relationship, though inhibited by their status, ripened to that they exchanged gifts, presents, and his family, including his mother and children, visited her. He was released on parole in May of 1961, but the pull of his 'friendship' for appellant cause him to disguise his identity and make a forbidden visit to her in violation of the 'former inmate rule'. This violation caused his re-incarceration, but on the condition upon liberty thereafter. In June however he became involved with a counterfeit bill immediately after which he 'consented' to become an informer for the Narcotics Bureau, (Tr. Pg. 1559, G. A. 180j). At or about this time Agent Broadnax became associated with narcotics enforcement activities in this jurisdiction. The District of Columbia unit was then not in possession of sufficient evidence to secure arrest warrants for Matthews and Phelps (co-defendants herein), but were in the process of 'investigating' their activities. This investigation subsequently eventuated in the indictment in this cause. (Tr. Pg. 1569, G. A. 180m). Meanwhile, Agent Broadnax and Joseph Jackson as an informer, became associated and practiced in their business together.

Appellant was released from prison, consitionally, December 2, 1961, andreturned to the District of Columbia, obtaining employment at Gordon's Super Market, 1818 Benning Road, N. E. (Tr. Pg. 1685, G. A. 220.) Jackson renewed his association with appellant, became a frequent visitor at appellant's home and at least to appellant, their relationships assumed a deeper significance. (Tr. Pg. 1689, G. A. 224). Shortly after this renaissance of their affair the informer told appellant he was in very serious difficulty and unless he had $1,500.00 he would have to go back to prison(Tr. Pg. 1631, 1691, G. A. 202, 226). This appeal was punctuated by the urgency of his

requests that she contact people she had formerly known in the drug business and obtain narcotis for him to sell so that he could raise the money (Tr. Pg. 1631, 1690, G. A. 202, 225). When she demurred he proceeded to drink excessively and urger her to get the drugs. After several days of this she agreed to see if she could make such a contact. (Tr. Pg. 1691, G. A. 226).

The informer testified that up until January 11, 1962, he had no information or knowledge that appellant was dealing in or had any connection with narcotics. (Tr. Pg. 1617, G. A. 195). The narcotics agent said they had no such information or knowledge. (Tr. Pg. 1375, G. A. 137). The informer had become apprehensive and testified that he had asked the agents not to 'involve' appellant. (Tr. Pg. 1617, G. A. 195). Despite this it appears that the informer was searched going into appellant's house on January 11, 1962, so that no one could say that he took any narcotis in. In this setting, the informer introduced Broadnax to appellant as his brother Ricky and immediately made the otherwise unexplained, provocative statement, that "all narcotics transactions are to be conducted with Ricky." (Tr. Pg. 1617, G. A. 195.) Thereafter, and it is significant, appellant secured narcotis from the very people the narcotics agents had been investigating months before she was released from prison. As induced, she turned them over to 'Ricky' as per Jackson's instruction. Meanwhile, the narcotics agents were positioned to maintain surveillance on the 'people they were after', utilizing appellant as a foil. The only government or toehr evidence of predisposition consisted of appellant's prior tow (2) convictions for narcotics violations occurring approximately nine (9) years before. Appellant testified that she had not associated with not participated in any narcotics transactions prior to the inducement by Jackson. (Tr. Pg. 1692, G. A. 227.)

Your appellant says that she was entitled to a judgment of acquittal, on entrapment, in light of the absence of any evidence of predisposition or ready complaisance other than the rather remote prior convictions. Sherman v. U. S., 356, U.S. 369. reversing 240 F. 2nd 249. The burden is upon the government once it is established that the first suggestion for the alleged illegal conduct is borached by its agents. Moses v. U.S., 220 Fed. 2nd 166, Sherman v. U.S. 200 Fed. 2d 880, The total picture is that of entrapment, unrelieved by proof that appellant was merely awaiting a convenient opportunity to deal in or sell narcotics. Hansford v, U. S. 112 U.S. App. D. C. 359, 303, Fed. 2d. 219.

IV

THE TRIAL COURT ERRED IN LIMITING THE CROSS EXAMINATION BY DEFENSE COUNSEL AND PERMITTING IMPROPER LATITUDE TO GOVERNMENT COUNSEL

Some reference to admissions of record must be laid for a proper appraisal of the exercise of the trial Court's admitted discretion in controllong the extent of the cross-examination. It was admitted by the narcotic agents that they had been investigating the alleged narcotic activities of Matthews and Phelps since some time in September, 1961, while appellant was still incarcerated. (Tr. Pg. 1569, G. A. 180M). Also the agents admitted that they were all on equal footing in the 'investigation' and had meetings at which they pooled their information and observations to coordinate their efforts. (Tr. Pg. 1571, G. A. 180m). Yet cross-examination by defense counsel was consistently limited to the actual personal knowledge of the agent and information confessedly at hand was denominated 'hearsay' and inadmissable (Tr. Pg. 1482, 1596, 1664, G. A. 211, 185). They admitted that their investigation started 'on this case' in September, 1961, and surveillance by Scott of appellant occurred December 21, 1961, yet attempts by the appellant's

counsel to go into the background of these statements (Tr. Pg. 1500, G. A. 165), was foreclosed by rulings of the Court (Tr. Pg. 1572, G. A. 180o, 180p), and recourse of the witness to the refuge the rulings permitted. Successful cross-examination, jury-wise, cannot survive objections, sustained by the Court on the theory that the cross-examiner is 'testifying' (Tr. Pg. 1577, G.A. 180r) and should take the oath as a witness (Tr. Pg. 1577, G. A. 180r). Nor is the overall trial room atmosphere attractive where extremely wide latitude is permitted on the other side of the trial table. (G. A. 93, 96). Included in this aspect of the trial was the cross-examination of appellant by the particular assistant who used a statement be obtained from her to indirectly put in evidence the fruit of his 'unusual' endeavors with appellant. Attempts by appellant's counsel to ascertain from narcotic agent Thompson at what time be heard parole mentioned during the course of the conversations between Reed, Hennegan and appellant, were restricted (Tr. Pg. 1480 et seq., G. A. 160, et seq.), although it appeared that he was listening to the actual conversation by way of a hidden microphone (Tr. Pg. 1472, G. A. 162). While the limitation of cross-examination rests largely within the discretion of a trial judge it is only after it has been fairly and fully exercised does the discretion to limit it come into play. Lindsay v. U. S. 77 U.S. Apps. D. C. 1, 2, 2, 133 Fed. 2d, 368. Whre the significance of what conversations went on prior to the time of appellant's alleged voluntary statement is apparent to all in light of the conflict in the testimony of the participants, the jamming of the recording. The testimony of Thompson as to what he heard, and when he heard it, was of undeniable importance.

The Court. on the contrary, permitted an unusual and improper latitude to the government in its cross-examination of the appellant. While she testified only to the method of obtaining the statements from her thru March 15, 1962. During the course of the trial it developed that the trial

assistant had a pre-indictment conversation with appellant, as a result of which he provided her with counsel who, in turn, 'advised' appellant to do precisely what he had her brought up from jail to do. When appellant indicated that the assistant had promised her certain consideration and had partially performed them, he masked his attempt to use her testimony before the grand jury, as an effort to 'impeach' her. The formula employed is as follows:

> He would aks her if she had made certain statements of fact and when she merely acquiesced in suggestions by her interrogators he would attempt to impeach her by referring to her testimony thereat before the graun jury. U. S. v. Sweeney 262 Fed. 2nd. 372; U. S. v. Provoo 215 Fed. 2nd. 531, and Smith v. U.S. 10 Fed. 2nd. 787. Appellant's protestations, the Court's misgivings, (Tr. Pg. G. A. 93 et seq.), the the assistant's disclaimers eventuated in permission to improperly examine appellant.

It is the essence of a fair trial that reasonable latitute be given to cross-examiner to establish either a fact or issue or to place the witness in his testimony/the actual environment so that the jural function may be more intelligently exercised. Tai Koo-yel v. U.S. 167 U.S. 274, 42 L. Ed. 166. Here the disadvantage to the appellant in unduly restricting her cross-examination seeking to exclude her statement, an area vital to a major defense claim, was clearly prejudicial, and, the improper license granted the Government to re-ventillate the same statement, salted the wound. However, the discretion to be exercised must be a sound one and the end product should not make 'fish of one and fowl of the other'. The Court would brook no interference when aspersions were ference when asperations were cast on the sexual conduct of the appellant, under the guise of 'affecting her credibility. The prosecutor suggests that she told Joseph Jackson that she had recently continued an intimate relationship with a man named Parker which had terminated with her imprisonment. (J.A. 112). Nor would it permit the correction or objection to cross examination mistating her testimony. (J.A. 116.)

V

THE APPELLANT WAS DENIED DUE PROCESS OF LAW AND HER RIGHT TO COUNSEL BY THE CONCERTED CONDUCT OF THE NARCOTIC OFFICERS AND THE GOVERNMENT ATTORNEY

The criminal process in the District of Columbia requires that any citizen, when arrested, shall be taken before some magistrate without unnecessary delay 1/, so that he may there be accorded a judicial admonition and be apprized of his or her rights in and about his predicament, as they are shaped by pertinent rules and the constitution 2/. The continued failure of enforcement authorities, even magistrates 3/, to abide by such directives, is evidenced by repeated appellate remontrance, but is usually only chastised by indirect evidentiary sanctions 4/, or hand-wringing. This otherwise perternitted evil is generally a culture and hand-mark of short cuts and impatience associated with a police environment from which the rule seeks to remove the prisoner at the earliest time consistent with the legitimate objectives of law enforcement as measured by an enlightened experience on the one hand and constitutional commands on the other. At least until the present, the Courts themselves have had no occasion to affirmatively enlist, much less exact, ready complaisance with its rules from its officers.

1/ Federal Rules of Criminal Procedure, Rule 5(a)(b).
2/ Mallory v. U.S., supra.
3/ Mitchell v. U.S., supra.
4/ In a recent cause Judge Burger suggested notifying the Police Commissioner of the names of Police who hinder prosecution by such conduct, in the hope that administrative sanctions might prove to be of aid.

The prosecutor, and trial counsel, was one of a few selected by the United States Attorney from his staff, to supervise and authorize the issuance of arrest warrants in the class of cases herein concerned. The U.S. Commissioner's warrant, by virtue of which appellant was taken into custody, by so much generated with the prosecutor in this cause. (J..A. 159, Tr. Pg. 183/6) The next morning after the arrest of appellant, March 9, 1962, government counsel was informed by the agents that they had a written statement from their prisoner, who, at long last, was to be presented to the United States Commissioner. He indicated a desire to have a more detailed statement from appellant, and on March 15, had appellant brought to his office from jail as he was informed she wanted to be a government witness. Appellant, meanwhile claimed that she did agree to become a witness in consideration for the promise of the agents (Tr. Pg. 1704) supported by that of the prosecutor, (Tr. Pg. 1733, J.A. 99), to drop all charges, in return for her "cooperation".

Appellant appeared in the office of the prosecutor without counsel, or judicial admonition, yet the prosecutor first inquired if she wanted to be a government witness, and then ascertained that she was an indigent, unable to hire counsel. (Tr. Pg. 1212, G.A. 117). He then suggested, as her counsel, an attorney whom he had already contacted for this prupose before appellant had arrived. (Tr. Pg. 1206, G.A. 113/4). The testimony of government counsel as to the length of his conference before the attorney arrived was not clear, nor was it vivid about its content. The witness was certain, however, that he told her that he couldn't and wouldn't drop all charges. (Tr. Pg. 1199, G.A. 112). It is evident that the time factor prevented, from his point of view, any possibility that appellant may have believed that he would grant her

immunity as he was authorized to do under the provisions of Title 18, Section 1406 U.S.C.A. or whether he was to proceed with the indictment , then dismiss her charges in open court in accordance with the procedure in Title 23, Section 110 of the District of Columbia Code. But be that as it may, it does appear, that there was some conversation with appellant in which the proposal to drop all the charges was the admitted subject matter. At any event, even his version, taken in light of statutory alternatives, then available to him, is more calculating than forthright. The appearance of the attorney selected by the prosecutor 5/ was no boon to appellant, whatever hopes she may have cherished were dashed when his pro forma representation eventuated in the 'advice' to let the prosecutor have his way, (Tr. Pg. 227 , G.A. 132). And things proceeded just as they did on the night of her arrest, same act, same play, but new scenery. The more "detailed statement" to the taste of the prosecutor was achieved without let or hindrance. The prosecutor assuaged her anguish at the grand jury door, and the attorney raised obstacles for any independent legal advice in the interim. (Tr. Pg. 1739, G.A. 103).

Defense of narcotic cases is not relished by the bar at large, nor does the poverty of a prisoner raise the prospect of such duty to the level of delight, but from the prosecutors side of the table, he has aligned with him the natural and understandable distaste of the public for those embroiled, statutory presumptions, detailed statements of evidence, and well screened witnesses. Familiarity with such a cause, for purposes of trial, is well within the easy grasp of anyone but a novice. The trial assistant in this cause, however, insisted on remaining of counsel,

5/ It may not have occurred to the prosecutor to use the Legal Aid Officer, one flight up in the same building.

although apprized of his probable testimonial involvment in the trial of an indictment secured as has been above described. The trial Court did not disagree with his decision to remain as trial counsel. Cf. U.S. v. Pepe 247 Fed. 2nd . 838,844, and Robinson. v. U.S. 32 Fed. 2nd 505. U.S. v. Alu 246 Fed. 2nd. 29, 34.

The duty of a prosecutor is not circumscribed by or limited to bringing to the bar of justice persons who have transgressed; it equally is imperative that this process does not soil the very law whose majesty he must preserve. To start or enter into a confederation with enforcement officers in a program calculated to deprive a citizen of procedural and constitutional rights is itself a violation of the law. The lawless enforcement of the law is not only an unrecommended, but a forbidden, practice. Title 42, Section 1985(2) U.S.C. Moreover, a prosecutor is not to throw his weight into the balance struck between an accused and the sovereign, unless that step is unavoidable. The actions of the prosecutor are but the actions of the sovereign he represents and his inappropriate conduct does violence to our concept of a fair trial and the due process of law. The criterion fixed by this Court is that an accused should not be required to take counsel not of his chosing, whose cleavage to his cause he could not reasonably expect or require. Johnson v. U.S. 71 Apps. D.C. 400, 110 Fed. 2nd, 562. The unwarranted assumption obvious in the preselection of an accused's counsel by a prosecutor, duty bound by oath to an adverse client, is highly undesirable and conductive to a disruption of the orderly administration of justice. Duke v. U.S. 255 Fed. 2nd. 721. Where his conduct in his dealings with an accused transgresses upon the prescribed and normal expectancies of effective representation, it will invalidate a conviction subsequently entered.

If this trial, as a result of the pre-trial ministrations of state offi-

cers, in reality, became empty of promise, and a mere pretense, appellant was denied due process of law. The actions of the prosecutor were the actions of the sovereign and if appellant was prejudiced thereby, such officiousness invalidated the proceedings. Mooney v. Holohan 249 U.S. 103, 112. Such has been the unremitted view of our courts about impermissable conduct of a prosecuting officer. Walker v. Johnson 312 U.S. 275, 286, 85 L. ed. 830. The appointment of counsel for the indigent is a function historically the province of our courts, as the Sixth Amendment grants protection against criminal proceedings without the assistance of counsel. Cornely v. Cochrane 82 Sup. Ct. 884. Such assistance does not mean the pro forma appearance of a member of the bar. Powell v. Alabama 277 U.S. 45, 77 L. ed. 158, or any other lip service to the command. The press of the requirement is such that it does not rise or fall on the presence or absence of a demand. Uveges v. Pennsylvania, 335 U.S. 437, 93 L. ed. 127.

If the initial denial of counsel (any immediate access to which the agents confederated to foreclose, although commanded to the contrary) was perpetuated by the prosecutor, who knowingly entered the lists to preserve, improve on, then utilize the ill-gotten gains, there was created within the shadow of this Court a denial of fairness shocking to the universal sense of justice. From any view the assumption by the prosecutor of a chore unrelated to his office to select and furnish counsel, a want born of the confessed certainty that appellant had need of one, was unhappy. One may never know all of the exigencies which prompted the particular selection made, but it is certain that we may 'prove the pudding' by tasting of it. In this endeavor we are not without guides, for we know that his effectiveness may be measured in terms of significant lapses of professional competence where there is no evidentiary problem attending ascertainment of the existence of factors recognized as probative of such lack.[2/] A reading of

the testimony of Mr. Tinney and Mr. Smithson does not savor of deep concern for appellant which we should expect from a guardian of this Court's rules on the one hand, nor the mark of an adversary advocate on the other. The sum of their efforts could only bankrupt any defense there may have existed. In series, appellant, in violation of the Rules of Court, was induced to incriminate herself, her right to counsel was reduced to a sham and her right to a fair trial was reduced to the shambles apparent of record.

CONCLUSION

WHEREFORE, your appellant asks that her judments of convictions be reversed, with directions to enter judgments of not guilty by virtue of entrapment.

Respectfully submitted,

Henry Lincoln Johnson, Jr.
626 Third Street, N. W.
Washington 1, D. C.

Counsel for Appellant
Appointed by the District Court

2/ The presence or absence of an uncompromised effort by counsel at all stages of the proceeding. Exrel Hall v. Ragen 60 Fed. Supp. 820, 824. (b) Neglect to urge well settled and pertinent legal principles where at least surface applicability obtains. Sanchez v. State 199 Ind. 233, 157 N.E. 1. (c) Errors in judgment so as to evidence failure to exercise any. People v. Gardner 303 Ill. 20, 135 N.E. 422.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17719

DORIS L. GARDINER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
FREDERICK G. SMITHSON,
BARRY SIDMAN,
Assistant United States Attorneys.

QUESTIONS PRESENTED

Appellant's confession to violations of the Narcotics laws commenced approximately 25 minutes after her arrest, and 10 minutes after her arrival in the offices of the law enforcement authorities. When questioned as to her guilt, she never denied it.

The Government's evidence showed that appellant unexpectedly produced heroin in the presence of an undercover Federal Agent, and held herself out as an immediate source of narcotics.

In the opinion of appellee the following questions are presented:

1. Was appellant's confession obtained in violation of the *Mallory* rule?

2. Was appellant, as a matter of law, entrapped?

602-874—63

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant Gardiner was convicted, with three others, of violations of the Narcotics laws.[1] She was indicted in 16 counts of a 22 count indictment and charged with conspiring to violate the Narcotics laws and with 15 substantive offenses. The substantive offenses concerned her traffic in heroin on January 11, 1962, January 26, 1962, February 8, 1962, February 20, 1962, and February 21, 1962 (each transaction giving rise to three counts of the indictment). The conspiracy concerned the period December 21, 1961—February 21, 1962. (*Matthews* J.A. 1–10.)

Appellant and her co-defendants were acquitted of conspiracy. She was, however, convicted on the 15 counts charging her with substantive offenses.[2] On December 13, 1962 she

[1] See *Matthews* v. *United States*, D.C. Cir. No. 17475, decided May 29, 1963.

[2] Co-defendants Matthews, Norman Pannell and Valeria Pannell were also convicted of substantive offenses. Co-defendants Phelps and Henry were acquitted on all counts. Co-defendant Clinton Johnson pleaded guilty to one count prior to trial, and the remaining counts against him were dismissed.

was sentenced to ten years imprisonment. The District Court granted her leave to appeal *in forma pauperis*, and appointed her present counsel. (*Matthews* J.A. 237.)

The trial

The trial was lengthy; it began on September 17, 1962, and lasted four weeks. The Government rested its case on September 27. The jury returned a verdict on October 13.

The primary Government witness against appellant was Thomas Broadnax, a Federal Bureau of Narcotics Agent. Broadnax, operating as an undercover agent under the name "Ricky," was introduced to appellant in her home on the evening of January 11, 1962 by one Joseph Jackson, an acquaintance of appellant (Sept. 19, 1962 Tr. 7; Tr. 1617). Jackson knew that Broadnax was a Federal Agent; appellant did not. It was thought by Jackson that appellant knew of some sources of heroin supply; she had so advised him (Tr. 1618). He and Broadnax expected appellant to supply the name or names of such sources (Tr. 764). It was anticipated that Broadnax would thereafter contact the sources and deal directly with them (Sept. 19, 1962 Tr. pp. 7, 9; Tr. 764). Accordingly, after Broadnax was introduced to appellant as Jackson's brother, and when the conversation turned to narcotics, Jackson advised appellant that Broadnax was going to be dealing in narcotics, that he wanted to be introduced to some sources, and that all narcotics transactions were to be done with Broadnax (Sept. 19, 1962 Tr. 7). The men made ready to leave, expecting to travel somewhere in the city to meet the "source" and obtain a sample of heroin which Broadnax had requested (Sept. 19, 1962 Tr. 7). But appellant announced that they did not have to leave, that she had the heroin, which she then produced, in her home (Sept. 19, 1962 Tr. 7; Tr. 822).

Jackson unsuccessfully tried to knock the narcotics out of appellant's hand, knowing that once she was observed in possession of heroin, she would be prosecuted (Tr. 1619). He had not suspected her of trafficking in narcotics, and had not wanted the Federal Agents to involve her in "anything as far as narcotics was concerned" (Tr. 1617). In his words: "[A]nd they said as long as she didn't touch it, and they were going

to try to see to it that she didn't touch it, but it so happened that when I got there or the agent and myself, Doris had it in her hand, because the previous arrangement was with her over the telephone that she was going to introduce me to somebody else that dealt in narcotics. As I said previously, I don't know anyone that deals in narcotics" (Tr. 1617).

After appellant produced the sample, Broadnax took it and left, ostensibly to have it tested (Sept. 19, 1962 Tr. 11). He later returned, indicated that the tests were satisfactory and that he would buy heroin in quantity (Sept. 19, 1962 Tr. 11). Appellant then made a telephone call, but could not make a "connection" (Sept. 19, 1962 Tr. 15). She told Broadnax that nothing could be bought that night, but that he should return the following evening (Sept. 19, 1962 Tr. 16).

On January 25, 1962 Broadnax telephoned appellant and asked to purchase an ounce of heroin (Tr. 475). She told him to meet her at her home the following morning and to bring $225 (Tr. 475, 477). When Broadnax arrived on January 26, appellant advised him that she had been unable to contact her source, and that she did not then have the heroin (Tr. 478). She told him to call her at 1:00 p.m. (Tr. 478). He did so, but no heroin had yet been obtained (Tr. 479). Pursuant to appellant's instruction, he called her again at 3:00 p.m. (Tr. 479–80). At that time she told him to come to Gordon's Supermarket, where she worked (Tr. 480). He did. Appellant was behind the meat counter. She asked him for the $225, took it, twice counted it, and gave Broadnax a package (containing heroin) wrapped in newspaper (Tr. 481). She told Broadnax to purchase some meat to avoid suspicion (Tr. 481). The sale of heroin was witnessed by another agent, standing near the meat counter (Tr. 482, 502). Broadnax's account was corroborated by several other agents who had stationed themselves in the vicinity of the Supermarket (Tr. 480, 488, 489).

On February 8, 1962, Broadnax went to Gordon's Supermarket and asked appellant if he could buy an ounce of heroin (Tr. 529). She told him to call her in the afternoon, and that in the meantime she would contact her connection (Tr. 530). Appellant was able to make contact later on in the day, and told appellant to come to her home in the evening (Tr. 531).

He did. Appellant was not there. She telephoned, however, and instructed Broadnax to walk down the street, and that she, in an automobile, would pick him up (Tr. 531–32). The reason for the meeting, she explained, was her observation of some suspicious looking cars with white men in them parked near her house (Tr. 532).

Appellant picked up Broadnax as she said she would (Tr. 532). They then drove a circuitous route around the city to lose the Federal agents who were in fact following them (Tr. 534–35, 556). After losing the agents, they stopped the car (Tr. 535). Appellant took $100 from Broadnax (advising him that she had made connection only for a half ounce), and left the car (Tr. 536). She returned in 15 minutes, gave Broadnax the heroin, and they drove off (Tr. 536–37). Broadnax's account of the event of this day was corroborated in material respects (Tr. 554–56).

On February 19, 1962 Broadnax called appellant and asked to buy an ounce of heroin (Tr. 574–75). She told him to bring $225 to the Supermarket the following morning (Tr. 575). He did, and left the money with her (Tr. 576). She told him to telephone her at noon (Tr. 576). He did (Tr. 577). She told him to come to the Supermarket at 1:30 p.m. (Tr. 578). He did. She gave him a half ounce of heroin, in a package wrapped in brown paper, and returned $100 to him (Tr. 578).

On February 21, 1962 Broadnax went to the Supermarket and asked appellant if he could buy a half ounce of heroin (Tr. 655–56). She took $125 from him and told him to return later (Tr. 656). He did. She then delivered the heroin to him (Tr. 657–58). Broadnax's account was corroborated (Tr. 671).

Appellant's confession

A warrant was obtained and appellant was arrested at approximately 4:45 p.m. on March 8, 1962 in front of her house as she was returning from work (Tr. 946–47, 959, 964). She was shown the warrant and advised of the reason for her arrest (Tr. 947). At the moment of arrest she denied having sold narcotics (Tr. 995). Her mother, who was in the house, was told of appellant's arrest and advised where appellant was being taken (Tr. 1076).

Appellant was taken to the offices of the Federal Bureau of Narcotics in the Internal Revenue Building (Tr. 947). The Federal Bureau cooperated with the Metropolitan Police Department in processing persons arrested by it for narcotics violations, and prepared line-up sheets, addict-forms, and fingerprint cards in the same manner as the local police (Tr. 949). Appellant was taken to the offices of the Federal Bureau for this purpose (Tr. 950, 1003).

During the automobile ride to the offices, appellant asked who she had made sales to. "Ricky," she was told. Her response was "oh", or "oh, yes", or "some expression of that sort." (Tr. 949, 996).

The arresting officers and appellant arrived at the Federal Bureau offices at approximately 5:00 p.m. (Tr. 948). Some ten to fifteen minutes after arrival in the office, and while the line-up sheet was in preparation, appellant was asked some questions relating to the offenses for which she had been arrested (Tr. 950–51). She began to make a running verbal statement, acknowledging her violations of the Narcotics laws (Tr. 952). At no time in the office did appellant deny complicity (Tr. 990). Notes were taken by an Agent as appellant spoke (Tr. 953). Her oral statement was reduced to writing as soon as it was completed (Tr. 953). While this was being done, the line-up sheet was completed, and appellant was fingerprinted (Tr. 988, 1073). The oral statement, in full, took approximately two hours (Tr. 953). After it was transcribed, it was shown to appellant. She read it, corrected it, and signed it (Tr. 954–55). No promises or threats were made to appellant at any time (Tr. 951). No force was employed, or inducements offered (Tr. 951). She was advised that she need not make a statement (Tr. 1000).

When appellant testified, she said she was questioned at great length before she made any statement, and that she did not sign any statement on March 8 (Tr. 1128, 1130). She acknowledged ten prior convictions (Tr. 1135–36). She was impeached on cross-examination by her testimony before the Grand Jury (Tr. 1806–9).

The Court admitted her written statement into evidence[3] (Tr. 1249, 1288). The issue of voluntariness was submitted to the jury under appropriate instructions (Tr. 2004–76).

Appellant's representation by counsel

Appellant was arrested on March 8, 1962. On April 5, 1962 the District Court appointed George Shadoan and H. K. Schroeder to represent her. On April 6, 1962 she pleaded not guilty. On that date, the appointments of Messrs. Shadoan and Schroeder were vacated, and William A. Tinney's appearance was entered and filed. Several months later, on September 14, 1962, Henry Lincoln Johnson, Jr. entered his appearance. On September 17, 1962 Mr. Tinney's oral motion for leave to withdraw as appellant's counsel was heard and granted. Mr. Johnson represented appellant throughout her trial, and was appointed by the District Court to represent her on this appeal.

STATUTES INVOLVED

Title 21 U.S.C. § 174 provides:

> *Same: penalty: evidence.*—Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

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[3] Appellant appeared before the United States Commissioner between 9:00 a.m. and 10:00 a.m., March 9, 1962 (Tr. 1767).

Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

For provision relating to sentencing, probation, etc., see section 7237(d) of the Internal Revenue Code of 1954. (As amended July 18, 1956, ch. 629, title I, § 105, 70 Stat. 570.)

Title 26 U.S.C. § 4704(a)—General requirement provides:

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax paid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

Title 26 U.S.C. § 4705(a)—General requirement provides:

It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.

SUMMARY OF ARGUMENT

I.

Fifteen minutes after appellant's arrest, she arrived at the offices of the Federal Bureau of Narcotics. Pursuant to the Bureau's policy and practice of cooperating with local law enforcement authorities, a Metropolitan Police Department line-up sheet was prepared for appellant. Some ten or fifteen minutes after her arrival in the Bureau's offices, and prior to the completion of the line-up sheet, appellant acknowledged her guilt and began to give a detailed oral statement concerning her traffic in narcotics. The oral statement was promptly reduced to writing, and immediately thereafter read, corrected,

and signed by appellant. On these facts, the trial judge properly denied appellant's objection to the introduction into evidence of her confession.

II.

A special employee acquainted with appellant was told by her that she could provide an introduction to a "source" of narcotics. Acting on this information, the special employee introduced an undercover Federal Agent to appellant. The Agent, she was told, desired to be put in contact with an individual who supplied narcotics. Neither the agent nor the special employee suspected that appellant herself dealt in narcotics; indeed, the Bureau intended to avoid involving her in any violation of the Narcotics laws. Appellant, however, produced narcotics herself, rather than introducing the Agent to a third party source. Her possession of and willingness to sell narcotics was unexpected and uninvited by either the special employee or the Federal Agent. In this state of the evidence, the trial judge properly denied appellant's motion for judgment of acquittal, made on the ground that entrapment had been established as a matter of law. The issue of entrapment was submitted to the jury under appropriate instructions. See *Matthews* v. *United States*, D.C. Cir. No. 17475, decided May 29, 1963.

III.

The record reflects the continued sound exercise of discretion by the trial judge in ruling on the objections and conduct of all counsel during a lengthy and hard-fought trial. Appellant's counsel invited, by his conduct of the case, the few mild rebukes directed to him by the judge.

ARGUMENT

I. Appellant's confession was not obtained in violation of the *Mallory* rule

Appellant was arrested at 4:45 p.m. on March 8, 1962. She was transported to the offices of the Federal Bureau of Narcotics for booking and routine processing. She arrived at said offices at 5:00 p.m. Within a matter of minutes, while a line-up sheet was being prepared, she began to make an oral statement,

admitting the violations of the Narcotics laws with which she was charged. She was not threatened, coerced, induced, forced or otherwise intimidated into making a statement. She was advised that she did not have to make a statement. Her oral statement was promptly reduced to writing. Under these circumstances, appellant's threshold confession was properly admitted into evidence, and was not obtained in violation of Fed. R. Crim. P. 5(a). See *Jackson* v. *United States*, —— U.S. App. D.C. ——, 313 F. 2d 572 (1962); *Hughes* v. *United States*, 113 U.S. App. D.C. 127, 306 F. 2d 287 (1962); *Turberville* v. *United States*, 112 U.S. App. D.C. 400, 303 F. 2d 411 (1962), *cert. denied*, 370 U.S. 946; *Metoyer* v. *United States*, 102 U.S. App. D.C. 62, 250 F. 2d 30 (1957). The fact that, in part, the statement was in response to questions does not affect its admissibility. See *Goldsmith* v. *United States*, 107 U.S. App. D.C. 305, 277 F. 2d 335 (1960), *cert. denied*, 364 U.S. 863. *Cf.*, *Gray* v. *United States*, D.C. Cir. No. 16972, decided May 8, 1963. Moreover, it was entirely proper for appellant's oral confession to have been promptly reduced to writing. See *Sawyer* v. *United States*, 112 U.S. App. D.C. 5, 298 F. 2d 333 (1962); *Turberville* v. *United States*, *supra*; *Metoyer* v. *United States*, *supra*; *United States* v. *Ladson*, 294 F. 2d 535 (2d Cir. 1961), *cert. denied*, 369 U.S. 824; *United States* v. *Vita*, 294 F. 2d 524 (2d Cir. 1961), *cert. denied*, 369 U.S. 823. Finally, appellant's original denial of complicity at the instant of arrest does not compel a conclusion of inadmissibility. See *T. Coleman* v. *United States*, D.C. Cir. No. 17444, decided April 19, 1963:

> Appellant's original denial then became "within a few minutes," a frank admission * * *. The appellant stated "he was trying to break in 944 Eye St." Appellant's oral admission simply supplemented what was already known to, and at trial, clearly established by the testimony of the officer. We have not been shown unlawful police "purpose" or such a lack of "circumstances of legality" as to require reversal on this aspect of the case. (Slip opinion p. 4.)

Appellant's brief intermittently complains of statements, other than the March 8 statement discussed above, allegedly

taken from her by the Government in violation of Rule 5(a). No statement other than the March 8 statement was introduced in evidence, and appellant's arguments about other statements are irrelevant.[4]

II. Appellant was not entrapped as a matter of law

A special employee held a Government Agent out to be his brother, and introduced him to appellant, telling appellant that the Agent wanted to be put in contact with a source of supply of heroin. It was not suspected by either the Agent or the special employee that appellant herself trafficked in heroin. Instead of supplying an introduction to a source, appellant supplied the heroin itself.

Accordingly, appellant was not induced to deal in narcotics. She created, rather than capitalized on, an opportunity to traffic in heroin herself. See *Lopez* v. *United States*, S. Ct. No. 236, October Term 1962, decided May 27, 1963. And, in any event, even if it could be said that she was in any sense induced to violate the Narcotics laws, there was ample evidence of her predisposition to do so. She set the stage for each narcotics sale. She showed complete willingness at all times to sell narcotics. She obviously was dealing in narcotics prior to her meeting with Broadnax. See *Matthews* v. *United States*, *supra*, slip opinion, p. 3: "The issue of entrapment was properly left to the jury in the state of the evidence, so appellant was not in law entitled to an acquittal." See also *Hansford* v. *United States*, 112 U.S. App. D.C. 359, 303 F. 2d 219 (1962); *United States* v. *Sherman*, 200 F. 2d 880, 882 (2d Cir. 1952). *Cf., Johnson* v. *United States*, —— U.S. App. D.C. ——, 317 F. 2d 127 (1963);[5]

---

[4] Similarly, appellant's attacks on the conduct of the Assistant United States Attorney who prosecuted the case, and on William A. Tinney, her first retained counsel, are irrelevant, since their alleged "misconduct" does not concern the March 8 statement. If these attacks were in any way relevant, appellee would deal with them, and show them to be scurrilous.

[5] Appellant's proposed instructions were argumentative and incorrectly stated the applicable law. The Court's charge was more than adequate, as apparently appellant recognized, since she took no exception to it. Nor did she offer suggestions or corrections (Tr. 2078).

III. Appellant's counsel's conduct of the case was not improperly restricted, nor was Government counsel permitted improper latitude in cross-examination

It is difficult to respond to appellant's cryptic two and one-half page analysis of a transcript in excess of two thousand pages, and demonstrate that the trial court did not improperly restrict appellant's case, or favor the Government's. Appellant's analysis demands, for its intelligent evaluation, a reading of the entire lengthy transcript. Such a reading will, in fact, demonstrate beyond peradventure the proper conduct of the trial by the court. It will also reveal repeated abuses by appellant's counsel, such as the asking of questions "calling continually for hearsay" (Tr. 766); "improper" questions (Tr. 767); and repeated objectionable questions (Tr. 787). Counsel was justifiably censured (Tr. 788–90). Indeed, the examination of Agent Broadnax by appellant's counsel (Tr. 1375 *et seq.*) is a good example of objectionable manner and procedure by an advocate: *e.g.*, misstatements of fact (Tr. 1388); repeated objectionable questions (Tr. 1389); argumentative questions (Tr. 1392, 1411); questions assuming facts not in evidence (Tr. 1396); testimony by counsel by means of questions (Tr. 1413). See also Tr. 1424–25 (examination of Agent Heneghan).

In sum, it is appellee's position that the record reflects the continued sound exercise of discretion by the trial judge, hard-pressed by counsel, in her rulings on the conduct and objections of all counsel in the case.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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FREDERICK G. SMITHSON,
BARRY SIDMAN,
Assistant United States Attorneys.

U.S. GOVERNMENT PRINTING OFFICE: 1963

GARDINER APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

511

Number 17,719

DORIS L. GARDINER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal From The United States District Court

For The District of Columbia

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United States of America)
)
v.) Criminal No. 289-62
)
Charles Matthews,)
Ellen M. Phelps,)
Roland R. Henry,)
Norman Pannell,)
Valeria Pannell,)
Doris L. Gardiner,)
Defendants.)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Washington, D.C.,
September 17, 1962.

2 THE CLERK: Case of Charles Matthews, Ellen M. Phelps, Roland R. Henry, Norman Pannell, Valeria Pannell, Clinton Johnson and Doris L. Gardiner.

MR. SMITHSON: The government will announce ready, Your Honor; there seems to be some question, however, at least with regard to one of the prospective defendants whom the government understood would be a witness for the government. I understand that as of either Friday or today, I am not certain which, she has counsel, Mr. Henry Lincoln Johnson, in place of Mr. Tinney who had been her previous counsel.

Now, I make this announcement because at the time of the arrest of the defendant, Doris L. Gardiner, she expressed to certain agents of the Federal Bureau of Narcotics that she desired to cooperate and to be a witness for the government. She spoke with me, after I had warned her that she did not have to talk to me and she should have counsel. She talked to Mr. Tinney. She again -- this was after she had already given a written statement to the agents -- she again spoke to me and did appear before the Grand Jury as a witness for the government. I was not present but I have the transcript of her testimony there. I talked to her on Wednesday, because I had received certain rumors to the effect that Mr. Johnson might represent her but did not as of Wednesday. On Wednesday, the defendant again informed

me that she planned to proceed with Mr. Tinney and to testify as a government witness.

In all candor to the Court, Mr. Johnson this morning announced that he now represented the defendant Doris Gardiner, that is the last-named defendant. And I received a letter from Mr. Johnson, which I received Friday, dated September 14, and in this particular letter he informed me that it would be necessary that I appear as a witness. Then he went on to make a statement --

THE COURT: Who is "I"?

MR. SMITHSON: Meaning me, Your Honor, it was directed to present government counsel -- "to appear as a witness to preclude and avoid any disease or conflict with the appropriate performance of the duties of a trial advocate." I must confess that I am somewhat amazed as to what the question of avoidance of disease or conflict is in this regard. But in any event, Mr. Johnson, I am sure, will make an effort to clarify that.

I would ask, before we proceed with the trial, Your Honor, we determine at this time whether or not the defendant Doris L. Gardiner does desire to be represented by Mr. Tinney or Mr. Johnson; of course, it is her choice; and whether or not, candidly, she intends to appear and testify, as she indicated to me on Wednesday, as a witness for the government and in accordance with her Grand Jury testimony. I think it is only fair to both the Court and all defendants to have made that announcement.

THE COURT: May I see that letter?

MR. SMITHSON: Yes, Your Honor. (The letter was handed to the Court and then returned to Mr. Smithson.)

THE COURT: Mr. Tinney.

MR. TINNEY: Yes, ma'am.

THE COURT: Mr. Tinney, do you represent Doris L. Gardiner?

MR. TINNEY: Your Honor please, at this time I respectfully ask leave of the Court to withdraw. Miss Gardiner has indicated she desires Mr. Henry Lincoln Johnson, Jr., to represent her and he has entered his appearance and he consulted me on this matter as late as Friday and indicated that he had.

THE COURT: Well, you entered your appearance in this case --

MR. TINNEY: Yes.

THE COURT: -- some time ago.

MR. TINNEY: Quite some time ago.

THE COURT: Have you made any application before this morning for leave to withdraw?

MR. TINNEY: No, I haven't, Your Honor please, because the appearance wasn't entered until Friday. Mr. Johnson didn't enter his appearance until Friday.

THE COURT: Is Doris Gardiner here?

MR. JOHNSON: Yes, Your Honor.

5 (The defendant Gardiner came forward.)

THE COURT: Is it Miss or Mrs.?

DEFENDANT GARDINER: Mrs.

THE COURT: Who is it that you want to represent you here?

DEFENDANT GARDINER: Attorney Johnson.

THE COURT: Mr. Johnson, are you prepared to go forward with her case?

MR. JOHNSON: If Your Honor please, I don't think I am. This

morning, before Judge Youngdahl, I asked Mr. Smithson to furnish to me a witness who was an eye witness to these offenses, by the name of Joseph Jackson. At first he represented to the Court that he did not know any Joseph Jackson.

THE COURT: Now, just a moment. When was this case set for trial?

MR. JOHNSON: I don't know, if Your Honor Please, my recollection isn't good --

THE COURT: Does anyone know when the case was set for trial?

MR. SMITHSON: It was first set on May 14, Your Honor. Your Honor, the continued date is today.

THE COURT: Apparently, according to this record, on the 27th of June this case was continued until today, September 17th. There has been plenty of time for everybody in this case, every defendant, to prepare for trial.

6 MR. JOHNSON: There are two things, I want to make this representation to the Court. I first talked to this young lady and she told me a story that was remarkable. I did not agree to represent her at that time, I asked her to give me the facts so I could verify what her facts were. In chasing down this evidence, I came to the place where I could not locate a Joseph Jackson. I got some information he was in New York. I went to New York. I tried to locate him. He was formerly a taxicab driver here. And then I got the information that he was employed by the federal government and that he was an undercover agent for the federal government.

THE COURT: What is his name?

MR. JOHNSON: Joseph Jackson. So this morning I made no request

for a continuance, but since we were going to be delayed a little while, I asked Mr. Smithson to furnish this man to me because he was an eye witness to this case. He said he did not know that man, he had never heard of him. And about three seconds later or five seconds later, he spoke to someone and said he did know him. I asked him would he furnish him to me and he said he would. When I came downstairs in front of this Court, I asked him again, "Will you furnish Joseph Jackson to me?" He said, "I don't know where he is," and he asked one of the narcotic agents if he knew where he was and he said he was around somewhere. And I said, "Well, can you find him for me?" And they said they would try. For the last hour, no one has
7 furnished him. I know that he is an informer for the United States Government, he was with a United States agent this morning.

THE COURT: Mr. Smithson, what about Joseph Jackson?

MR. SMITHSON: He is here, Your Honor. He was here as a witness in another case.

The agent informed me he was present on one instance. Of course, the government did not expect he would necessarily have to be produced, as we expected to use the testimony of the witness Doris Gardiner, the defendant, and, we hope, the government witness Doris Gardiner; therefore, we would not have to bring in any witness as to that transaction.

These facts were conveyed to the Federal Bureau of Narcotics and they brought in Agent -- I shouldn't say "Agent," because he is not an employee in the sense of a government employee. He is here in the courtroom -- in the courthouse. He was brought in on another case which has been disposed of, Your Honor, set for trial today.

I have just told the agents, and I have not talked with this

witness Joseph Jackson, to get a subpoena on him for this case and I have sent them for that purpose and, as I told Mr. Johnson, I will make him available to him when the agents show him to me or bring him in. He may talk to him, I have no desire to hide him.

MR. JOHNSON: May I say this in all candor, Mr. Smithson, all the narcotic agents involved -- the narcotic agent involved in the case on trial this morning is involved in the trial here, he was present -- all the people were present and before Judge Youngdahl.

THE COURT: Mr. Johnson, you are a late-comer to this case. The case is going forward, there has been plenty of time, this continuance has been known for months, and Mr. Tinney has been in this case and presumably he is prepared in the case and we are going to have the case go right forward.

MR. JOHNSON: May I do this, Your Honor --

THE COURT: What is it you want to do?

MR. JOHNSON: There are certain witnesses in this room that are going to be pertinent to this. I want to make some representations to Your Honor and Your Honor can make whatever judgment -- I am not asking for a continuance if Your Honor doesn't think it is appropriate.

THE COURT: I don't think it is appropriate in view of the number of witnesses and the number of defendants and it is set for trial on this day.

MR. JOHNSON: If this weren't an extraordinary thing, I wouldn't make this request.

THE COURT: I will ask the witnesses to follow the marshal.

THE MARSHAL: All witnesses on both sides kindly step this way, please.

(The witnesses left the courtroom.)

9 THE COURT: Are there any witnesses in this case left in the room?

(No response.)

THE COURT: I take it that no one in the room is expected to be called as a witness; of course, this excludes the defendants.

MR. JOHNSON: If Your Honor please, I can very well imagine what Your Honor's reaction is to a late appearance of an attorney in a case, after an attorney has been in it all along. The remarkable part --

THE COURT: We are not now talking about that. I thought you said you wanted to make some statement out of the presence of the witnesses.

MR. JOHNSON: I do.

THE COURT: What is that?

MR. JOHNSON: It concerns that. Your Honor remarked that Mr. Tinney had been representing this defendant for quite a period of time and you imagined he was prepared to try the case. I make this representation to Your Honor and I think the evidence will show it. Mr. Tinney was placed in this case by the United States Attorney. He wasn't chosen by Doris Gardiner, he was called by the United States Attorney to his office for the purpose of representing this defendant. That at that time that this defendant had been -- a statement had been exacted of the defendant and a promise had been made to her. That that promise first involved a dismissal
10 of all cases, it second involved a plea to a possession count and the fact that her parole would not be revoked and the fact she would be sentenced by a Judge outside of a courtroom. That at that time Mr. Tinney made his appearance in the case, that her parole officer was also called at that time.

THE COURT: You mean she is on parole now, is that what you are saying?

MR. JOHNSON: Yes, ma'am, and that these representations were made for her to get her to testify. That at no time, at no time up until the time I entered my appearance, has she been represented by anybody in any antagonistic way to what Mr. Smithson wants.

So if the representation is that Mr. Smithson can choose a lawyer for a defendant and then say the defendant has been well represented by counsel and well prepared to defend as serious a charge as this, then the right to counsel means nothing. I don't think that Mr. Smithson has any right to --

THE COURT: Mr. Johnson, we are not going to have a whole lot of speech-making here. If Mrs. Gardiner wants you for her attorney, I am perfectly willing to release Mr. Tinney and to let you go on and represent her. But I am not going to continue this case.

MR. JOHNSON: All right. Your Honor please, are you going to permit under these circumstances, since there is a confession involved in this case that Mr. Smithson got --

11 THE COURT: I can't in advance rule upon what the Court is going to do about a confession until I know what all the circumstances are.

MR. JOHNSON: My difficulty is that Mr. Smithson is going to be a witness to that confession and he said he was at the Grand Jury room when this girl testified, that is true.

THE COURT: Just a minute. Mr. Smithson, do you expect to be a witness in this case?

MR. SMITHSON: No, Your Honor. I might state at the time -- because there have been some rather wild accusations here -- that at the

time I spoke with this defendant Doris Gardiner, Doris Gardiner had already given a complete statement to the Federal Bureau of Narcotics and desired to cooperate. When she came in, she came in -- and I never talked to her alone, I always talked to her in the presence of narcotic agents and I believe on all occasions in the presence of a Deputy U. S. Marshal, Eleanor Cole or Core, I can't think of her last name, who is downstairs, who incidentally was a witness to one of the statements that this defendant made. At the time I spoke with her, I told her she did not have to talk to me, that she was entitled to an attorney and that she should have an attorney. I asked her if she had anyone she desired, otherwise I said I want you to speak to an attorney before you talk to me and I would offer to get you Mr. Tinney. I did select Mr. Tinney in the sense that I proffered him as a respected member of the Bar whom I have admired and I think he is a good member of the Bar. I certainly know that Mr. Tinney talked with this defendant.

I never at any time promised to dismiss the charges against her. In fact, if Your Honor cares to hear Mr. Tinney, it was determined that this particular witness, defendant, was to plead guilty before whomever the Trial Judge would be, to count six of this indictment. This witness is on good time, she was, I think, for forty-some months. I never promised her that her good time would not be revoked.

I did say to her, because she had complained that there had been a detainer placed against her by the parole authorities that had not been served, that I would see if I could get that served so that, to use the language at the Jail, she would not be shooting blanks on that time she has to make up. I wrote a letter for that purpose to the parole authorities to

see if, in their discretion, they would do that.

I at no time promised to dismiss all of the charges against her or to see that her parole would not be revoked.

THE COURT: But you state that you do not expect to be a witness?

MR. SMITHSON: That is correct, Your Honor.

THE COURT: Well, now, what is this, Mr. Johnson, about this letter that you wrote Mr. Smithson?

MR. JOHNSON: Well, the information that I have contradicts -- Mr. Smithson has made a representation Mr. Tinney was called by him, who advised this young lady as to her rights. Mr. Tinney tells me that the young lady had already talked to Mr. Smithson, already done all of her commitment, and if he told her that she needed a lawyer, from what Mr. Tinney says, she had already been traduced and any necessity for a lawyer had been obliterated before she talked to Mr. Tinney.

THE COURT: Do you expect to call Mr. Smithson?

MR. JOHNSON: Yes, I don't see how I could avoid it; in the middle of the trial, it would have to be, Your Honor, in the middle of his case.

THE COURT: That would be your calling him as a witness.

MR. JOHNSON: Here is what will appear before Your Honor at the very first blush of this case: He admits to Your Honor that he went to the Grand Jury with this girl, he admits that he called Mr. Tinney to represent her, that he selected him, that she didn't know him; he admits that he advised her, in her presence, to go ahead with this. He admits, at a time before the indictment, he speaks of a sixth count, which couldn't have existed at that time, there was no indictment by the Grand Jury at that time.

So what he has represented in this case is that he has completely obliterated any right this girl had before he called Mr. Tinney, by his bare

14 statement before Your Honor. I don't see how, since he admitted he took a statement from her, he admitted he had her sign it, he admitted he discussed punishment with her, he admitted he sent a letter to the Parole Board about her back-up time, he has admitted he has put himself in this case directly as a principal part of his case, he has further admitted that was the principal part of his case -- in addition to that, something else, Your Honor please. He had this young lady brought up to his office in handcuffs; one time before in this court, Judge Tamm reprimanded him for that.

During the time when Mr. Tinney was representing that girl, and evidently he has now turned over to Mr. Tinney, he admits that last Thursday or Wednesday, he had her brought up from the Jail, brought up to his office to discuss this case and what she is going to do about her defense.

THE COURT: Well, why wouldn't he, if she had agreed to testify for the government?

MR. JOHNSON: Out of the presence of her lawyer?

THE COURT: I don't know whether it is out of his presence or not; all you know about the case is what somebody has told you.

MR. JOHNSON: I suggest to Your Honor, regardless of which way you look at this, Mr. Smithson has put himself directly in this case, where it is absolutely impossible to conduct it without him being a witness.

15 MR. SMITHSON: I did not take this witness before the Grand Jury, I was not the Grand Jury assistant. It was Mr. Alexander Stevas who took her before the Grand Jury, it was not I and I never made any statement that it was. And before I talked to Doris Gardiner on Wednesday, I had informed Mr. Tinney that I desired to talk with her and ask her what her views were

and whether or not she was going to be a witness for the government. You may inquire of Mr. Tinney. I told him when I would have her up there and he could be present or not, as he chose.

* * * * * * * * * * * * * * * * * *

MR. JOHNSON: Your Honor please, there are two things. I notice in the last plea that was taken, I imagine this is a step taken under Title 23 which permits a defendant, during theccourse of a case, to plead. But the statute also requires the remaining counts of the indictment be dismissed and I didn't hear that that had happened. If they are not dismissed --

THE COURT: I take it that you are aware that no counts are dismissed until after sentence is imposed. You have been here long enough to know that.

MR. JOHNSON: I understand that usually happens when it is voluntarily done for addefendant in a pending trial to testify in that trial, but the only specific statutory authorization for a defendant to take the stand for the prosecution in the case on which he is on trial is to follow the procedure under Title 23; however, I merely make the point.

THE COURT: What is it you are referring to, title what?

MR. JOHNSON: Title 23, 105, I think it is.

MR. MITCHELL: 115.

MR. JOHNSON: 115, that provides any time the United States Attorney may -- in order to call a person as a witness for the government, that Mr. Smithson has said he is going to do -- may dispose of the case against him and then call him as a witness. Now, that procedure has not been followed here at the present time. What has happened is he has entered

a plea to one count of the indictment; the remaining counts, I imagine, are open. And unless that procedure is going to be followed under Title 23, Section 115, I am going to ask that Mr. Tinney remain at the counsel table and the man not be permitted to testify.

MR. SMITHSON: By what right does Mr. Johnson represent Mr. Clinton Johnson? I don't believe, Your Honor, he has entered any appearance for him, and Mr. Tinney is here and has represented him.

18 MR. JOHNSON: I represent a co-defendant.

THE COURT: Just a minute. (To the Marshal:) Get me Title 23, Section 115. Here, take this paper so there will be no mistake about what I am asking for.

MR. JOHNSON: May it please the Court, as I have not talked to Joseph Jackson, I am going to ask this Court to continue this case until Wednesday at 1:30.

THE COURT: Now, I am not going to continue this case, I have already told you that, Mr. Johnson. I am not going to continue this case.

* * * * * * * * * * * * * * * * *

20 THE COURT: This section that you gave me, Title 23, Section 115 --

MR. JOHNSON: It is the D. C. Code, if Your Honor please.

THE COURT: Yes, Title 23, Section 115.

MR. MITCHELL: 110.

THE COURT: All this section says is that when two or more persons

21 are jointly indicted, the court may, before a defendant has goneiinto his defense, direct any such defendant to be discharged that he may be a witness for the United States. It is permissible, it is not mandatory at all. Then is goes on and says an accused party may also, where there is not sufficient

evidence to put him upon his defense, be discharged by the court, or if not discharged by the court, will be entitled to the immediate verdict of the jury for the purpose of giving evidence for the other party accused with him.

MR. JOHNSON: Yes, ma'am. In other words, it works both ways, the only way this can be done during the course of a trial, where he is indicted with co-defendants, is for a disposition of this case against him to be entered, either by the Judge or by the jury or by plea and disposition of the remaining charges. He can't be in and out of the case at the same time. He can't appear as a defendant for twenty-one counts in the case and asaa convict -- and a witness on the other count.

THE COURT: Mr. Johnson, I don't think what you say is required. There is just one clause that applies in this particular case and all it says is that when two or more persons are jointly indicted, the court may, before a defendant has goneiinto his defense, direct any such defendant to be discharged that he may be a witness for the United States.

MR. JOHNSON: May it please the Court, then if he is not going to be disposed of, may I ask, I want a severance from him .

THE COURT: Well, I will deny that.

* * * * * * * * * * * * * * * * * *

TRANSCRIPT OF OPENING STATEMENTS OF GOVERNMENT AND COUNSEL FOR DEFENDANT GARDINER

Washington, D.C.,
September 18, 1962.

THE COURT: Mr. Johnson.

MR. JOHNSON: May I make mine?

Doris Gardiner is charged with several offenses under the

13 narcotics law. My defense to that particular transaction: that she was entrapped into doing this. And I charge that there was a conspiracy to do this to her. And in the same terms that Mr. Smithson charged a conspiracy to violate, I charge that the following defendants, in this conspiracy, are guilty: Joseph Jackson, a member of the Parole Board, who was her parole officer; Mr. Smithson; several narcotic agents, Mr. Broadnax principally, two others in particular, Mr. Turney, and one or two other persons.

The intent and purpose of this conspiracy was as follows: Joseph Jackson, who met this defendant while this defendant was in prison --

THE COURT: Mr. Johnson, do I understand that your defense is that there was a conspiracy to entrap her?

MR. JOHNSON: Yes, ma'am.

THE COURT: Into committing offenses, is that it?

MR. JOHNSON: Yes, ma'am. And also to deprive her of her civil rights: deprive her of her right to counsel, deprive her of her right to her day in court.

14 MR. MITCHELL: If Your Honor please, may we approach the bench at this time?

THE COURT: Yes.

(At the bench.)

MR. MITCHELL: If Your Honor please, on behalf of the defendant whom I represent, I wish at this time to interpose my objection to the opening statement that is being made by Mr. Johnson on the grounds that necessarily implicit in his opening statement is the suggestion that the acts alleged by the government to have been committed were in fact committed, and thereby it is prejudicial to my defendants who have entered a

plea at this juncture of not guilty. I don't believe Mr. Johnson has a right to concede guilt of my clients, even though it may relate to his own. On that basis, if Your Honor please, I object, because I think this is a prejudicial opening statement to my clients.

MR. SMITHSON: I might say, Your Honor, I cannot understand any basis for Mr. Johnson's assumption of a conspiracy to deprive Doris Gardiner of her civil rights.

THE COURT: I was going to mention that without your having brought it up. If she has been deprived of any civil rights, this is not the place to have them redressed.

MR. JOHNSON: It is a criminal offense.

15 THE COURT: We are not trying it here.

MR. JOHNSON: If Your Honor please --

THE COURT: I don't want another word said about deprivation of her civil rights. If she is being deprived of her civil rights, there is a method for redress, and it is not in a criminal case.

MR. JOHNSON: It is no question of color.

THE COURT: It is no question of anything.

MR. JOHNSON: If Your Honor please, she has a right to be taken before a commissioner.

THE CCURT: Let me tell you something. We are going to try this particular case here, Mr. Johnson, and not any other case. She may have been deprived of her rights, but if she has there is a method and a time for redress of them. You are limited here to what you expect to show in the defense. And it wouldn't be any defense that she had been deprived of civil rights if she has in fact violated this narcotic law.

MR. JOHNSON: Your Honor may be right. Maybe my phraseology was wrong.

THE COURT: You are getting up and saying, if I understood it, she has pleaded not guilty, you are saying if she did do it she was entrapped.

16 MR. JOHNSON: If she was entrapped, she is not guilty at all.

THE COURT: What you are saying is that, in effect, she is not guilty, but that if she did anything about these narcotics that she was entrapped. I am perfectly willing for you to say that because that is your defense. But we are not going to go into any deprivation of civil rights. You are not to repeat them.

MR. SHORTER: Your Honor, may I make a motion on behalf of defendant Matthews similar to the one made by Mr. Mitchell in so far as Mr. Johnson's statements are necessarily trampling upon their rights in this case and this case to be tried separately and have their guilt considered separately from that of other defendants.

THE COURT: Do any of you claim entrapment?

MR. MITCHELL: We don't know. It would depend upon how it develops, Your Honor. I wouldn't be in position, very frankly, to say to Your Honor at this time. It may well be, under the Matthews case which Your Honor is familiar with, it would develop.

I think further in protection of the record, if Your Honor please -- I dislike doing this -- but further in protection of the record, in protection of our clients, I think I should make two motions to Your
17 Honor. One is, I would make a motion to Your Honor that you grant us a severance. I think we are going to be horribly prejudiced. Secondly, if Your Honor please, as an alternative I would ask Your Honor to declare a

mistrial.

THE COURT: I will deny those motions.

Mr. Johnson, you are not to begin any argument with reference or any representation with respect to a violation of civil rights. That is general language and it is not concerned in this case.

MR. JOHNSON: All right. I don't do that.

MR. SMITHSON: I would suggest, Your Honor, because it has already been said and of course I couldn't make any objection, that Your Honor should instruct the jury to disregard any such comments.

MR. JOHNSON: I object to that.

MR. MITCHELL: I am afraid that would merely lay emphasis to it, which is the prejudice we are already claiming.

THE COURT: You didn't claim anything about violation of civil rights.

MR. MITCHELL: No.

THE COURT: He wanted an instruction given to the jury with reference to disregard his statement.

18 MR. JOHNSON: Your Honor, suppose evidence shows she has been deprived of her civil rights?

MR. SMITHSON: Mr. Johnson, your voice carries very far.

THE COURT: I absolutely forbid you to keep on talking about a violation of civil rights. That doesn't mean a thing. It doesn't tell anything to this jury. It may mean one thing to one person and another thing to somebody else. You are only to indicate what you expect to show.

MR. JOHNSON: What I expect to show. Can I say there is a conspiracy to entrap her?

THE COURT: Yes, if you want to; if you want to say there was.

(End of the bench conference.)

THE COURT: The jury is instructed to disregard what Mr. Johnson has said about a deprivation of civil rights. If anybody has been deprived of civil rights, there is a time and a place to assert a claim for relief. But in this particular case, the only thing that is involved are these charges that are in this indictment here.

Now you may proceed, Mr. Johnson.

MR. JOHNSON: Ladies and gentlemen, the conspiracy I charge is to entrap her.

19 Now I am going to show you the following evidence to show how she was entrapped: This girl was let out on parole in December. Prior to that time she had met the principal witness for the government, Joseph Jackson. He at that time was serving a term for robbery in the penitentiary at Lorton. He was a motion picture operator. He became enamored of this girl while she was there, and used to send her small gifts during the time of his incarceration: Sweaters, money. But he also did this: He had his mother go down to the penitentiary and pose as a relative of hers and take the little family down, to make sure of this young lady thinking that he was in her heart and that he loved her.

I am also going to show, at that very time and during the time he was in the penitentiary, he was an agent of the United States Government; that he was getting nine dollars a day, or more money, or some money, to induce people to violate the law. So while she was even in prison they started on her.

Now, when she got out, they sent him back to her, in January.

She had been out. When she got out she tried to get a job. Nobody would hire her. She has got a bad record. Nobody would have anything to do with her. Nobody would show her any kindness or any courtesy at all. She
20 couldn't get a job, so she went to the United States Employment Office and che got a job of sorts. She got a job at a supermarket where she got a dollar an hour, which is below the scale. That isn't what you are supposed to pay an American citizen. But she worked for that just the same, to try to make it on her own.

This gentleman that the government has -- they had started the conspiracy already. They started when he was down in prison. I am going to show you the reason they indaced him to do this was that they had a counterfeiting charge on him. He got out of prison for a little while and he counterfeited something and then they sent him back to prison and they held the counterfeiting charge over his head. Then they let him back out, even though he had a charge of counterfeiting. Even though he violated his conditional release, they let him back out to do this work. Then, knowing that this girl was working for starvation wages and couldn't help herself, they sent him back to her. They sent him back to her. Had him give her money. He is not employed anywhere, so far as we are able to find. He hasn't had a job since August. But he has money to give her. Takes her to work every day. He has an automobile. A non-employed convict working for the United States Government with an automobile.

21 He takes her to work. He brings her back. He gives her money and tells her they are going to get married. Then all of a sudden he tells her he is in trouble. He says, You know what I tried to do. We are going to have a happy life. We will try to make life together again.

She has no hope. No place to look but to him. And they know that. So they prey on her, they get her to come there for ten days, urging her to get some drugs from somewhere, because he allegedly has killed some man in Virginia and has to have immediately some money. Well, she sees everything she has ever hoped for going out the window. So they induce this girl to get some drugs.

Having induced her to get the drugs, let's see whether the United States Government participated in the conspiracy affirmatively. So far, they have just got this character -- and you ought to see how well he is dressed too. They dress up these type of fellows right well, to be attractive to a little girl. So they use everything; every vicious thing that they can use to get this girl. When they get her in that fashion they lock her up, four o'clock on March 8.

I am going to show you that the rules of this court required that as soon as she was arrested -- of course it is a warrant for arrest -- that she should be taken before a commissioner, who charges, then she is placed on bond or not placed on bond. I am going to show you they didn't do that to her.

MR. SMITHSON: Just a moment. I think, Your Honor, counsel has far exceeded pripriety.

THE COURT: Just a minute. Counsel, come to the bench.

(At the bench.)

THE COURT: You are now arguing in an inappropriate field. What you said was that they got her to do this. Now you are trying to tell what you said happened to her after that.

MR. JOHNSON: Yes. Because they got a statement from her.

THE COURT: The time will come up, and if they use that

statement then you can show the circumstances of that.

MR. JOHNSON: He has already indicated, Your Honor, he is going to use it.

THE COURT: He didn't.

MR. JOHNSON: He is not going to use any statement?

23 MR. SMITHSON: I didn't say that either.

MR. JOHNSON: Your Honor, I don't think it makes any difference.

THE COURT: Just a minute, Mr. Johnson. You are talking so loud that everybody in this room can hear you.

MR. JOHNSON: I have a cold.

THE COURT: You are not to go into what happened after she passed these narcotics, if she did pass them. I judge from what you said that she did. That is what I got from what you said. Now, you want to go through what was done to her after that. That certainly couldn't have influenced her going out and getting the narcotics.

MR. JOHNSON: If Your Honor please, may the jury be excused?

THE COURT: I will excuse the jury for just a moment.

(The jury then left the courtroom.)

(End of bench conference.)

MR. JOHNSON: If Your Honor please, Your Honor has indicated that you are going to stop my showing, as far as evidence is concerned --

THE COURT: Just a minute. I understood you to tell the jury that this defendant that you represent was induced to get certain drugs.

24 MR. JOHNSON: Yes, ma'am.

THE COURT: Now, after having told them that, you want to indicate what you say happened to her subsequent to that time.

MR. JOHNSON: No, ma'am.

THE COURT: That is what I understood.

MR. JOHNSON: No, ma'am. I am going to show what they did to her at that time.

THE COURT: What did you say to the jury?

MR. JOHNSON: I said, I shall show you that they did not take her to a commissioner.

THE COURT: No, no, I am not talking about that. What did you tell them that they got her to do with respect to narcotics?

MR. JOHNSON: Purchase them.

THE COURT: Yes. All right. Now, that is what you say they had her do.

MR. JOHNSON: Well, they had her do more than that.

THE COURT: About narcotics?

MR. JOHNSON: Yes, if Your Honor please. In addition to that, I intend to tell the jury this: that when she was arrested she was not taken to a commissioner as the rules of this court require. She was kept
25 in the Narcotics Bureau until ten o'clock that night; that she was arrested around four; that during the course of that arrest she was told that they weren't interested in her, that they were only interested in getting her to get these other people; and that --

THE COURT: And did she go out and get them?

MR. JOHNSON: Yes, ma'am.

THE COURT: According to you?

MR. JOHNSON: According to me.

THE COURT: You say that she passed narcotics subsequent to that time? Is that what you are saying?

MR. JOHNSON: No, ma'am, I am not saying that.

THE COURT: You are not saying that she bought or sold or there is any charge that is based subsequent to that time?

MR. JOHNSON: Not subsequent to the time of her arrest. I am down to the date of her arrest.

THE COURT: You are not to tell them what happened after her arrest.

MR. JOHNSON: If Your Honor please, I think I have to make a proffer.

THE COURT: It has nothing to do with the defense of entrapment. It is what happened before.

MR. JOHNSON: May it please the Court, may I do this: I think
26 it does. I think I have a right -- I can only show these things by evidence that is impersonal. I can only show an explanation of it by what they did afterwards. I can show, and I tender, Your Honor, the following evidence: I intend to show you that they kept her there from four o'clock until ten o'clock; that they did not take her to a commissioner. She denied any connection with the narcotics up until eight-thirty; that she said she didn't know any man named Broadnax; that they finally held her there and brought Broadnax in there. When they brought Broadnax, she said, Why, this is Rickey, Joseph Jackson's brother. She asked him why did you do this to me, and that he told her why it was done to her. And asked why would Joseph Jackson do this to me. The narcotics agent told why it was done to her; why he did it to her. He told her why Jackson was specifically picked to do this.

In other words, if you cut me off there, you will cut me off from the very proof of what I say is true, because they have admitted it.

I don't see any other way I can prove it.

THE COURT: I don't see that that has one single thing to do with entrapment. If she was entrapped, if she was, she was entrapped before she was arrested. She was not entrapped later.

27 MR. JOHNSON: If Your Honor please, I intend also to show this: that in order to perpetuate that entrapment, to keep this girl away from any protection at all, to make this entrapment stick, that she was brought, at ten o'clock in the morning, downstairs to the commissioner's office, taken directly to Mr. Smithson's office. When she got up there a statement was extracted from her; that a promise was made her before the narcotics agent, which is a violation of the law.

THE COURT: Mr. Johnson, I am not going to have any of this stated to the jury, not any of it.

MR. JOHNSON: Your Honor, I am not going to suggest to Your Honor that I am going to do it. I am making a tender to Your Honor. There is no jury present at the present time. I am not going to do anything that Your Honor tells me not to do. Nothing. But I think it is my duty to present to you what I intend to show.

THE COURT: You want to say anything, Mr. Smithson?

Had you finished?

MR. JOHNSON: No, ma'am.

THE COURT: Go ahead and finish.

MR. JOHNSON: I intend also to show that at ten o'clock in the morning that a conversation was had with Mr. Smithson in which some representations were made that the charges would be dropped against her.

28 THE COURT: What has that got to do with entrapment?

MR. JOHNSON: If Your Honor please, here is what I think it is.

The burden of showing entrapment is a heavy one. It is a heavy one. I came into this case in three days. I haven't asked for any continuance.

THE COURT: I don't see how you can show entrapment by showing something that happened after the person was allegedly entrapped. If there is going to be any inducement to the person, it is bound to be before the entrapment occurs. It is certainly not afterwards. Is all that you have to say along this line of something that occurred subsequent to the alleged entrapment? Is that it?

MR. JOHNSON: Yes.

THE COURT: I don't want to hear any more of that.

MR. JOHNSON: What happens later explains why the entrapment occurred and why it was entrapment, and not capable of some other explanation.

THE COURT: Whatever bearing what was done had on the entrapment, it is bound to have been done before the entrapment. You can't possibly entrap a person by things done subsequent to the entrapment.

29 MR. JOHNSON: The only thing I can tell Your Honor about that is this: that he is not going to admit it is entrapment. If he is going to admit it is entrapment, I don't have to worry. But once he denies it, I am going to show the pattern of conduct of the prosecution. I am entitled to show the temper of the prosecution. I am entitled to show, in addition to that, why I can't get any other evidence than what I have. I have only been in here three days.

THE COURT: I don't want to hear anything more about this, Mr. Johnson. If you have anything to say to this jury about entrapment, it must be something that occurred previous to the time that she was arrested for these alleged offenses.

MR. JCHNSON: Then with that ruling, if Your Honor please, the only thing I can say is what I have said. Anything that happened before then, because the rest of the things that happened I have no way of knowing. I can only say by what people did afterwards what happened first.

THE COURT: You have concluded, have you?

MR. JCHNSON: Beg your pardon?

THE COURT: You have concluded, then, your argument?

MR. JCHNSON: No, I haven't concluded my statement. I said as far as this.

30 THE COURT: Which statement are you speaking of, your statement to the jury or your statement to me?

MR. JOHNSON: Your Honor said you didn't want to hear any more of my statement.

THE COURT: I want to know what it is you intend further to say to this jury, because practically everything you have said has been out of order.

MR. JOHNSON: I am going to abide by Your Honor's ruling. With regard to what else I was going to show, if Your Honor wants to hear that I will outline it.

THE COURT: I want to know what it is, because you haven't shown a correct statement thus far about what they are entitled to consider.

MR. JOHNSON: The issue of credibility, and my explanation of it. The issue of credibility between this young girl, who is in the poorest shape possible to controvert what a narcotic agent says or what anybody says, is so narrow that I am depending on surrounding circumstances to corroborate her.

Now, Your Honor has said that if it happened afterwards, that it hasn't any bearing on it. I think it does. And I am going to show you the following facts: I am going to show you that at the time she came up
31 to Mr. Smithson's office that the promise they made her indicated they did not want her and they merely used her to go and get some other people. They knew she wasn't dealing but they knew they could use her -- in in corroboration.

THE COURT: I asked you once before about the offenses that are charged. Are you claiming that she did anything subsequent to the time that she was arrested?

MR. JOHNSON: No, Your Honor. I have conceded to you that the conduct that I am going to talk about at the present time does not bear on what happened prior to her arrest except in corroboration of it. That is all. I say that what she says happened is verified. If she says she wasn't dealing in narcotics and these people induced her to deal in narcotics, a statement that they made that they weren't after her, but they knew they could get her to go get someone else.

THE COURT: Was that made after she was arrested?

MR. JOHNSON: That was made after.

THE COURT: Then it couldn't have entered into the matter of the alleged entrapment.

MR. JOHNSON: Your Honor, I didn't say, if Your Honor please -- Maybe Your Honor misunderstands me. What I intend to show, Your Honor, is
32 not an ingredient of the entrapment, as direct proof of the entrapment, but in corroboration of statements that of themselves might not appear to be entrapment, but an explanation of the intent and purpose by which they were done by the narcotics agents.

THE COURT: We haven't had any evidence here as yet.

MR. JOHNSON: This is the evidence I thought I was supposed to tell the jury. I don't want to presume on Your Honor's time. Your Honor has been very gracious to me. I wanted to say this: I thought I was supposed to tell the jury what I was going to show.

THE COURT: If you are expecting to show entrapment by something that occurred subsequent to the time that she considered these offenses, it certainly isn't proper, because the entrapment, if there is any entrapment, is what occurred previous to the time that she did whatever she did.

MR. JOHNSON: I agree. What I am trying to say to Your Honor, and maybe we are at cross-purposes, I say I prove conduct X before the sale. Conduct X. That, of and in itself, that is a man going to see a girl, taking her back and forth from home.

THE COURT: Mr. Johnson, it seems to me that you are talking out of order, trying to prejudice the jury or to arouse their sympathy in this matter.

33 MR. JOHNSON: If it is not true, if Your Honor please, it will revert to her disadvantage. They will send her to jail.

THE COURT: Life is too short for us to go into everything.

MR. JOHNSON: I don't want to go into anything except what affects this defendant.

THE COURT: We are just going into the things about this case.

MR. JOHNSON: That is all I want to go into, if Your Honor please: what this defendant, what the narcotics agent, what they meant to do by what they did.

THE COURT: You are arguing. We are going to get on with this

case. I have made my ruling. Anything that you set up in the nature of entrapment, or what you claim about entrapment, is to be something done prior to the time that she did whatever she did.

MR. JOHNSON: I see. Then I am precluded -- so that I may clearly understand, Your Honor -- I am precluded from offering any evidence corroborating her claim?

THE COURT: I don't know what evidence you can offer. You haven't made a proffer about it yet; who is going to testify or what they
34 are going to say, and I don't know what the government's evidence is.

MR. JOHNSON: I think Your Honor is correct about that. I think it probably would be better for me to make a tender.

THE COURT: Don't tender now. You can wait until your time comes. Whatever evidence you are going to tender, this isn't the time to tender it.

MR. JOHNSON: If Your Honor please, can't I indicate to the jury what I intend to show in that regard?

THE COURT: You have. Not about what occurred after this was done.

MR. JOHNSON: I see. Then Your Honor's ruling, so that I might abide by it without any fear of transgressing one iota, I cannot tell this jury any conduct, conversations or anything that happened after her arrest?

THE COURT: I am not going to make any such ruling as that at this time. I must know what evidence you are offering and then I will be in a position to rule. But I am certainly not going to permit you to tell this jury, under the guise of entrapment, something that happened subsequent to the time that she did whatever she did and had been arrested.

35 MR. JOHNSON: I am a little embarrassed, if Your Honor please. I guess I understand what Your Honor means and I will try to abide by it.

If Your Honor please, may I do this? May I state the purpose of the conspiracy? It will embroil all this stuff. I say that the conspiracy, from the start of this thing, was this: It was the intent and purpose of these people to induce this girl to sell them narcotics, and induce her not to have counsel, induce her not to --

THE COURT: This business about counsel, what has counsel got to do with it? She wouldn't have any occasion for counsel until after she had been arrested. You are certainly not to mention anything about counsel.

I am getting very impatient with you, Mr. Johnson.

MR. JOHNSON: If Your Honor please, if Your Honor thinks my conduct is improper, I wish Your Honor would tell me because I don't want to offend.

THE COURT: I have told you several times. I think if you want to tell the jury that your offense is entrapment and that you claim that government agents, or whoever they were, conspired or planned to get this girl to pass these narcotics, and that they tricked her into doing it, if you want to tell them that, all right, I have no objection to that. Whatever it is that you claim that they did to get her to deal in the narcotics, whatever you want to say, that you claim that they did, that you expect to show that they did; but as to what was done subsequent to that time, I don't think that that is proper to be shown under the guise of entrapment.

36

MR. JOHNSON: Well, no, I don't think it goes simply to the

question of entrapment itself. I think --

THE COURT: What does it go to?

MR. JOHNSON: It goes into corroboration of her statement as to what the conspiracy was, to entrap her. In other words, Your Honor is restricting me.

THE COURT: I am not restricting you at all. I am simply saying that you cannot tell this jury that you are going to claim as entrapment something that occurred subsequent to the time that she did what she did. Whatever she was influenced by must have happened prior to the time that she did what she did.

MR. JOHNSON: It is such a continuous program, if Your Honor please, I don't know where it is interrupted. If the conspiracy ever terminated, it didn't terminate in her arrest. And it would seem to me that regardless of which way we view it, it is going to be admissible in
37 any event for this reason: Now let's view it from this point of view. Whatever I say about it, these defendants and everyone of them are going to say this: She has made a statement, they have all been arrested and charged with a conspiracy, this Broadnax has had conversations with her, Joseph Jackson has had conversations with her. They are entitled as a matter of law to know the reach and extent of how they obtained this girl to go before the grand jury. They got her to go before the grand jury and indict them. So I don't see how we are going to stop before she goes before the grand jury. I just don't see in this case how you can possibly try these people here on an indictment obtained by Doris Gardiner's statement before a grand jury, and her own indictment before a grand jury, and say that I can't show how it happened. In this very indictment.

THE COURT: I haven't said you couldn't show how this business of entrapment occurred.

MR. JOHNSON: No, you haven't, Your Honor, but you have indicated to me I can't show how this indictment was obtained against her. These people are trying this indictment and I think I am entitled to show this jury how the government got this indictment against her, because ordinarily, if people would meet, and would get valid, honest evidence, which they would pass on as citizens -- I want to show that they were duped, and I think I am entitled to show that to this jury.

THE COURT: Bring the jury in.

TESTIMONY OF WITNESS BROADNAX
On September 19, 1962

3 THOMAS E. BROADNAX was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITHSON:

Q Your name is Thomas E. Broadnax?

A That is right, sir.

Q B-r-o-a-d-n-a-x?

A That is right.

Q What is your employment?

A I am an agent with the Bureau of Narcotics, United States Treasury Department.

Q I will ask you if on that day you knew one Joseph Jackson or had occasion to meet him?

A Yes, I did, sir.

Q And by what name were you known to him?

A I was known to him as "Thomas" and "Rickey."

Q And "Rickey"?

A That is right, sir.

4 Q Now I will ask you if you had occasion on the 11th of January 1962 to meet with one Doris Louise Gardiner?

A I did, sir.

Q Now, how did you first meet with her? Did you meet her personally or speak to her on the phone? Just how did you meet her?

A The first time I met Doris Gardiner was at 1506 Upshur Street when I was in the presence of the special employee.

4

Q Was this in the northwest section of the city?

A That is right, sir.

Q And what date was this?

A This was January 11, 1962.

Q About what hour was this?

A Approximately 8:15 p.m.

Q Did you go there, sir, by prearrangement?

A That is right, sir.

Q That is, with Joseph Jackson?

A That is right, sir.

Q And you went there and met this person that you have described as Doris Gardiner?

A That is right, sir.

5

Q When you entered, sir, these premises, did you, or did this Mr. Jackson in your presence, have any conversation with the defendant Doris Gardiner regarding narcotics?

A Yes, he did, sir.

Q Q He did, or you did?

A We both did, sir.

Q And who started the conversation? You, Jackson or Doris Gardiner?

A If I remember correctly, sir, the special employee did, sir.

6 BY MR. SMITHSON:

Q M . Broadnax, the question was, as best you can, relate the conversation that you, Jackson and the defendantGardiner had regarding narcotics.

A Mr. Jackson introduced me to the defendant and told her

that I was his brother, and that all the narcotics transactions would be done with me.

Q Was that all of the conversation that was had?

A No; that wasn't, sir.

Q Would you continue with the whole conversation at that time.

A The special employee then asked the defendant how much the ounce of heroin would cost us. And the defendant said that it would cost between two hundred and two hundred and ten dollars. I then told the defendant that at that price I should have a sample, because this was a lot of money. And then, in a couple of minutes, the special employee again asked the defendant if we were ready to leave, because at this time we did not think that the defendant was selling the heroin. So the defendant told us then that we didn't have to leave the house, that she had heroin there. And with this, she went into the back room and came back out in about five or ten minutes with two pink tissue papers in which there were four capsules in each. And the four capsules contained- - one of the packages contained four capsules of white powders, suspect heroin, and the other was a brownish powder.

Q Now this special employee, sir, did he stay there at that time?

A Yes, he did, sir.

Q What representation had you made to her as your purpose for obtaining these narcotics?

A I was supposed to be selling the heroin, sir.

Q In the local area?

A No, sir; not in the local area.

Q What did you do then with those suspect four capsules?

A I then left the hreoin with Agent Heneghan who retained it, and I went and placed a call to TA 9-5421 and spoke with the special

employee. I told him that --

MR. MITCHELL: Objection.

MR. SMITHSON: I have no objection, Your Honor, to cutting this off. He did have a conversation.

THE COURT: The special employee - -

MR. SMITHSON: Is not a defendant.

THE COURT: The objection is sustained.

BY MR. SMITHSON:

Q You had a conversation, however, with this person Jackson?

A That is right, sir.

Q Pursuant to that conversation did you go anywhere?

A Yes, sir. I went back to 1506 Upshur Street,

Q Following this conversation, what if anything did she say, what did you say?

A Well, following this conversation she said that it wasn't possible for me to plrchase that night because her connection wasn't available but that I could come back the following night around 7:30 p.m., and that she would take me to the connection.

Q What about Jackson? Did he leave with you or stay there?

A He didn't leave with me, sir.

474

DIRECT EXAMINATION

BY MR. SMITHSON:

Q Mr. Broadnax, you have previously appeared and have been sworn and testified, is that correct?

A That is right, sir.

475 Q Now, I would like to direct your attention, sir, to the date of January 26, 1962. I will ask you, sir, if you had occasion on that date in the morning hours to go to 1506 Upshur Street, Northwest?

A Yes, I did, sir.

Q And did you meet anyone there?

A Yes, I did, sir.

Q Whom did you meet?

A I met the Defendant Doris Gardiner.

BY MR. SMITHSON:

Q Now, was this by happenstance or was this by prearrangement?

A This was by prearrangement.

Q What prearrangement did you make?

A I made a telephone call to the Defendant, sir.

Q When?

A The day prior to the 26th of January.

476

Q All right. Did that telephone call relate to narcotics or the purchase of narcotics?

A Yes, it did.

476

BY MR. SMITHSON:

Q Would you relate, then, to us, sir, that conversation that you had with the Defendant Doris Gardiner that previous evening, the 25th, with regard to narcotics?

A On the 25th of January, 1961, I made a phone call to TA 9-5421, and spoke with Doris Gardiner.

I told Gardiner that I wanted to purchase an ounce of heroin, and if it was possible for me to purchase it the following day.

MR. JOHNSON: I object, if Your Honor please.

Your Honor has ruled one time that you were not going to conduct a hearing out of the presence of the jury; and since this is a separate transaction, I again make the request that you do that, if Your Honor please. I imagine you have a similar ruling. I want to reserve the point.

THE COURT: The request is overruled.

MR. JOHNSON: Yes, ma'am.

477

Q What was that particular phone number that you called, sir?

A TA 9-5421.

Q I see. Where did you receive that number?

A I received that number from the special employee on the first meeting with Doris Gardiner.

Q What if any answer did Doris Gardiner give you?

A That I was to come to 1506 Upshur Street on the morning of January 26, 1962, at approximately 8:30 a.m.

Q And were you to pay for this narcotics or was it to be given to you?

A I was to bring $225.00 with me for the purchase of the ounce of heroin.

477

Q You did go to this address?

A Yes, I did, sir.

Q When you arrived, sir, did you have any conversation

478
with Doris Gardiner at that time relative to this narcotics?

A Upon arriving at 1506 Upshur Street, Gardiner advised me that she hadn't been in contact with her connection, and that I was to keep the $225.00 and to call a telephone number that she was giving me at about 1:00 p.m. that same afternoon, and that I would be able to purchase the heroin.

479

Q Did you ever make this call to this number 399-9797?

A Yes, I did, sir.

Q About what hour?

A At about 1:00 p.m. that same afternoon.

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Q Did you speak with the Defendant Gardiner?

A Yes, I did, sir.

Q When you spoke to her, what was the conversation?

A When I made the phone call to Gardiner, she told me that everything was ready and for me to come to 1818 Benning Road to Gordon's Supermarket, and that she would be there waiting for me.

Q Now, did you go there?

A Yes, I did, sir.

Q What time did you go there?

A I arrived there about 3:30 p.m.

480

Q Mr. Broadnax, did anyone go there with you?

A Yes, they did, sir.

Q Who?

A There was Agent Reed, Agent Heneghan, Jones and Scott, the former Agent Scott.

486 DIRECT EXAMINATION

BY MR. SMITHSON:

Q Your name is Samuel J. Reed?

A Yes, sir.

Q You are employed where?

A I am an agent with the Federal Bureau of Narcotics, Washington, D. C.

Q And do you know or did you know at that time a person by the name of Thomas Broadnax?

A Yes, sir.

Q You knew him to be what?

A I knew him to be a narcotic agent.

Q Did you know a Herman A. Scott at that time?

A Yes, sir.

487

Q Were all of you together on this date of January 26?

A Yes, sir, we were all together on that date.

Q Was that by prearrangement with anyone?

A Yes, sir, that was by prearrangements with the other narcotic agents whom you have mentioned.

528 THOMAS E. BROADNAX, Jr.,

was recalled as a witness by the Government, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. SMITHSON:

Q You are the same Thomas E. Broadnax that was heretofore sworn and testified in this case?

A That's right, sir.

Q I would like to direct your attention, Mr. Broadnax, to February 8th, 1962, and I will ask you, sir, if on that date in the morning hours you had occasion to contact or meet with Doris Gardiner?

A Yes, I did.

529

Q All right. Where did you see her or speak with her, if you did?

A I saw her at Gordon's Supermarket, at 1818 Benning Road.

THE WITNESS: At that time I told the Defendant Gardiner that I wanted to purchase an ounce of heroin, and the defendant told me that she would contact her connection and for me to call her back at 1:00 p.m.,

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the same day.

Q Did you call again?

A Yes, I did, sir.

Q What was that conversation?

A At this time Gardiner told me I won't be able to purchase the heroin and I should call her at her home at 8:30 p.m. that night.

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Q No, no. Pursuant to that information, sir, what did you do?

A I went to 1506 Upshur Street, Northwest.

531 Q All right. Now while you were there, did you see Doris Gardiner or speak with her on that occasion?

A While I was there I did not see Doris Gardiner, but about 15 minutes after I had arrived the telephone rang and I was called to the telephone.

535 Q What was this conversation that you and Doris Gardiner had relative to this narcotics or narcotics in teneral at that time?

A Well, we were going to meet, going to the vicinity of the Shrimp Boat and that she was supposed to meet someone there who would be bringing the narcotics.

541 ANDREW J. HENEGHAN

was recalled as a witness by the Government, and having been duly sworn previously, was examined and testified further as follows:

MR. JOHNSON: (Inaudible).

MR. SMITHSON: The stipulation would have been perfectly understandable if the exhibit which is the present container had been so marked, but you will recall that on our previous exhibit and this one, it was not, and therefore I don't want any hiatus. At this time I want to prove that part of it.

DIRECT EXAMINATION (Resumed)

BY MR. SMITHSON:

Q You are the same Andrew J. Heneghan who was previously sworn and testified in this case?

A Yes, sir.

541
Q Directing your attention, sir, to the date of February 8, 1962, I will ask you if you had occasion to meet with Agent Broadnax?

A I did.

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Q I will ask you, sir, if on that particular day you had occasion to be in the vicinity of 1506 Upshur Street, Northwest?

A Yes, I did.

Q Tell me, were you observing the home of the Defendant Gardiner?

A That is correct.

Q How many of you were out there?

A There was Agent Reed, Agent Tompson, Agent Wurms and myself.

Q Now, did you see Agent Broadnax enter this premises?

A I did.

543
Q Did anyone follow him, if you know?

A Yes, someone did.

Q Who was that?

A That was Agents Wurms and Thompson.

* * * * * * *

OFFICIAL TRANSCRIPT

September 26, 1962

SAMUEL J. REED

1014
was called as a witness by the Government, and having been previously duly sworn by the deputy clerk, again took the stand and testified as follows:

CROSS EXAMINATION (CONTINUED)

748 Q Now, when you started work -- you work independent of all other narcotic agents?

A Sir, I come out of the New York office, I was nowhere near Washington.

Q I didn't ask you where you came from, Mr. Broadnax.

A Well, then, I don't work independent of all agents.

Q I see. You work in collaboration with agents here?

A When I am here, yes, sir.

Q Were you here in June?

A No, I wasn't, sir.

Q Were you working in collaboration with agents here in September?

A Yes, I was.

762 Q I see. Now, during the course of your testimony, sir, you indicated to this jury that when you first had a conversation with Gardiner and before these pills were allegedly produced, that you didn't think she was dealing in narcotics?

A That's true, sir.

Q Now, not only did you say that you didn't think, you said that we didn't think. What "we" were you talking about?

A Joseph Jackson, sir.

Q Just you and Joseph Jackson?

A And the other agents, sir.

Q So, then, your testimony now is that --

MR. SMITHSON: Objection -- excuse, go ahead.

BY MR. JOHNSON:

Q -- is that up until you went there on the 11th, neither you nor the Narcotics Bureau nor Jackson thought she was selling narcotics,

isn't that right?

MR. SMITHSON: Objection to the form of the question as to testimony now. I don't think it's ever changed.

MR. JOHNSON: That is what he said his testimony --

THE COURT: The objection is sustained to this question.

MR. JOHNSON: I see. Maybe I better put it this way:

763 BY MR. JOHNSON:

Q You have testified on direct examination, under oath, that on January the 11th and up until the time that she produced these pills, neither you, the narcotic agents, nor Jackson believed that she was selling narcotics, is that true?

A That's right, sir.

Q Well, now, tell me this, sir: You have also represented something else to this jury and I want you to think about it. You have also represented that you hired Jackson to introduce you to people that were selling narcotics?

A I didn't hire Jackson, sir.

Q Isn't that what the purpose, he was supposed to give you the names of people that were selling narcotics?

MR. SMITHSON: Objection, Your Honor. The question was did he hire him, and the witness has --

MR. JOHNSON: Beg your pardon. I know that he didn't personally. If Your Honor please, I think it's perfectly obvious that I don't mean he is in the business of hiring them personally.

THE COURT: He has told you several times that he didn't hire him, but you keep putting that in your questions.

MR. JOHNSON: I beg your pardon. I don't want to suggest that you hired him personally, Mr. Broadnax. If I say you, I meant

the Narcotics Bureau. I don't mean you personally.

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BY MR. JOHNSON:

Q Can you answer the question now?

A Well, sir, a minute ago you said they had something hanging over his head. Now you say they hired him.

* * * * * *

Q What were you doing over there, then?

A She was going to introduce us to someone who was selling narcotics.

Q I see. But she knew someone who was selling?

A Yes, sir.

Q She told you that?

A That's right.

Q Did Jackson sell narcotics?

A Not to my knowledge, sir.

* * * * * *

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Q So, it is your testimony, you want this jury to gather from your testimony, I take it, that on January 11, when you went to this girl's house, which you say was for the first time, never knew her before, and that there was no pre-arrangement by Jackson, none at all; your first words that Jackson spoke to her in your presence, the first words, "All of the narcotic transactions will take place with you," -- without any more, without any pre-arrangement that came out of the open, clear sky?

A Sir, when I say pre-arrangements were not made, they were

not made to make a case on this defendant.

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THOMAS E. BROADNAX, Jr.

resumed the witness stand and testified further as follows:

CROSS EXAMINATION

BY MR. SHORTER:

Q Mr. Broadnax, when were you first assigned to the District of Columbia?

A Well, I wasn't assigned, sir, I was sent here on special assignment, September, 1961.

808

Q On a temporary basis?

A September, 1961.

Q Now, did I understand you correctly to say, in response to one of Mr..Johnson's questions, the first time you went to Doris Gardiner's house was on the evening of January 11, 1962?

A That's right, sir.

* * * * * *

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Q And name them for me.

A Agent Reed and Agent Heneghan.

Q All right. Now, who conducted the briefing at that time?

A Well they both more or less, I wasn't sure which one did the most.

Q They filled you in on what the situation was?

A That's right.

Q And what was to take place?

A That's right, sir.

Q Now was it then that you learned that you were to pose as Mr. Jackson's brother?

A Well, no, sir.

Q Did this develop spontaneously after you were inside the house with Mr. Jackson?

A I'm not sure. Either going to the house or after we left the other agents or in the house, I'm not sure.

Q Now had you, in the course of working with Mr. Jackson before this ever posed as his brother?

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A Yes, yes, I have.

Q Now, in that event it was indicated to Mrs. Gardiner after you were inside that your name was Ricky Jackson the, is that right, or were you a brother who had another name, sir?

A I don't know. It never was inquired of me.

Q Now you were introduced and presented to Mrs. Gardiner as Mr. Jackson's brother?

A That's right, sir.

Q And she accepted this?

A That's right, sir.

Q Now I believe in answer to one of Mr. Johnson's questions there was some mention about groundwork and he asked you, sir, whether or not you knew of anything that had taken place between Mr. Jackson and Doris Gardiner insofar as inducing her to do what was supposed to take place and you said no you didn't know of anything that had taken place?

A That's right, sir.

Q Now having that in mind as being the groundwork that Mr. Johnson had in mind, I ask you this: You were wholly unfamiliar with this so-called groundwork.

MR. SMITHSON: Objection, Your Honor. That presupposes there was any groundwork.

BY MR. SHORTER:

Q Well, if there was some groundwork.

812

A Well, sir, what do you consider groundwork?

Q Well, Mr. Jackson had been in contact with Mrs. Gardiner?

A Right, sir.

Q That was obvious.

A Right, sir.

Q And there was some relationship between the two of them?

A That's right, sir.

Q Be it friendship, boyfriend-girlfriend, neighbors, what have you, there was some relationship?

A Right.

Q And it is a fact, is it not, sir, that when Mr. Jackson went in, he was well known to Mrs. Gardiner, they greeted each other as being persons who knew each other?

A That's right, sir.

* * * * * *

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Q Now the subsequent calling of Mrs. Gardiner by you, and the other events that took place between you and Mrs. Gardiner as you

have related them to us here in this courtroom, were all a consequence of this original meeting that you had with Mrs. Gardiner in her home with Mr. Jackson on January 11, 1962; is that not correct, sir?

A That is correct.

* * * * * *

CROSS EXAMINATION (CONTINUED)

BY MR. MITCHELL:

Q Mr. Reed, in respect of your arrest of the defendant Doris Gardiner, you have previously testified, sir, that on February the 15th, 1962, you obtained an arrest warrant?

A We did, yes sir.

Q Now, when you say "We did," sir, to whom to you refer?

A Well, Agent Broadnax signed the complaint. Agent Heneghan and I accompanied him to the United States Commissioner's office for that warrant.

* * * * * * * * *

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Q I see. And were you also acting then pursuant to and in collaboration with Mr. Smithson of the District Attorney's Office?

A I am quite certain that periodically Mr. Smithson was apprised of our actions out on the street, but I don't believe he gave me any advise as to what -- when to apprehend.

Q You are not certain of that?

A No, I am not.

* * * * * * * *

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Q Now then, thereafter you left and took her into your custody at that time, did you not?

A Yes.

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Q And you left, together with the other two agents, that is, three agents, and the defendant Doris Gardiner, and proceeded to your office?

A Yes.

Q Now into whose office was it that you took her?

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A The office used by Agent Heneghan and myself.

Q Now then, did you then at that time see or come in contact, while she was in your custody, with other agents who were in the office?

A At that time?

Q Yes, sir.

A Other agents in our office? I don't believe so, no.

* * * * * *

Q Now, tell again, if you will, exactly what occurred from the time you got into that office until the time that you say she made her statement?

A When we first took her in the office I had the Metropolitan Police Department line-up sheets in my desk. I took them out to prepare them and we started asking Doris some questions concerning her involvement in narcotics.

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Q Now, at this time that you say you started asking her questions about her involvement, you were aware, were you not, that she had already told you that she was not involved, were you not?

A That is correct.

* * * * * * * *

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Q Did you previously testify, sir, that prior to the beginning of the filling in of these sheets which you have brought to the courtroom, that you began to ask questions of the defendant?

A No, I think I testified that I started to fill in the form and while I was starting to fill in the form we started asking the questions.

Q Well now, the questions you started to ask her, were they questions contained on this sheet?

A No, sir, they were questions concerning her participation.

Q Now that's what I have reference to. Now, isn't it a fact she had already told you she wasn't involved?

THE COURT: You have asked him that once before, Mr. Mitchell.

MR. MITCHELL: Well, not in this particular frame of reference, if Your Honor please.

THE WITNESS: She told us at the time we advised her of the warrant at her home that she had not sold any narcotics, but after she got in the car and we were enroute to the office she was asked whether or not she remembered little Ricky.

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BY MR. MITCHELL:

Q Now, by whom was she asked that?

A I don't recall specifically whether it was me, Agent Heneghan or Agent Jones.

Q Yet you do recall that such a question was asked:

A Oh, yes.

Q I see. And you are now about to relate to us, I suppose, what you say she said?

A She just made a more or less gutteral expression, "oh," or something -- "oh," or "ah," or something similar to that.

Q She never said that she did?

A Well, she asked us later, "Well, did Joe know that he was a narcotic agent?"

Q No, the question I asked you was, at the time that you were taking her down in the automobile and you asked the question that you have just told the Court you asked, she didn't say that she had sold any narcotics to him, did she?

A No, not at that moment.

Q All right. Now then, you were, at the time that you took her to the office, and I believe your purpose in taking her to the office was to fill out this short form, wasn't it?

A Part of it, yes.

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Q Well, what was the other part?

A Naturally, interrogation.

* * * * * * *

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Q I see. How fast do you type, sir?

A I can type approximately 70 words a minute, 60, 70 words a minute.

Q So it didn't take you long to fill out this Defendant's 5 for identification, did it?

A It wouldn't have, no.

Q Now, about what time would you say, sir, that you had finished and completed filling out Defendant's No. 5 for identification?

A About what time?

Q Yes, sir, time of day, hour.

A It must have been close to 9, 9:15, approximately.

Q And at what time, if you know, sir, was it that Agent Heneghan completed typing up Government's No. 15 for identification?

A I would estimate shortly after I did.

* * * * * * * * *

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BY MR. MITCHELL:

Q Now, let me ask you this: Did you advise Doris Gardiner, at any time that you had her in your custody and prior to having taken the statement from her, that she might call her attorney?

A No.

Q Did you advise her, or permit her to call a friend, her mother or parent or her guardian or anyone at all?

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A She did not ask to.

Q Did you at any time tell her that she might do so?

A No.

Q Now, did there come a time that -- well, as a matter of fact, Agent Reed, you wanted her there incommunicado, didn't you? That was advantageous, was it not?

A No, not necessarily.

Q Well, other than necessarily it was advantageous, was it not?

A We were furthering our investigation, yes.

Q Well, it was to your advantage that you not be interrupted by her lawyers or anything of that sort, wasn't it?

A Possibly so, yes.

Q Now, did there come a time that you also directed that she not be permitted to talk to anyone, you directed the police department not to permit her to talk to anyone?

THE COURT: You mean while she was with them?

MR. MITCHELL: When she was still in their custody.

MR. SMITHSON: I am sorry -- while she was still in their custody?

MR. MITCHELL: That's right.

MR. SMITHSON: I couldn't hear you.

BY MR. MITCHELL:

1047 Q My question was, at the time she was in their custody, and simultaneously with turning her over to the Police Department, did you direct the Police Department to hold her incommunicado?

A I don't recall if we left any instructions or not.

A You wouldn't deny that you did that?

A No, I wouldn't deny it, no.

MR. SMITHSON: Objection, Your Honor.

MR. MITCHELL: All right, sir.

BY MR. MITCHELL:

Q Did you make any efforts whatsoever to obtain a female custodian for this defendant while she was in your custody?

A No.

* * * * * * * *

1048 Q Prior to the time of the commencement of your interrogation, did you at any time suggest to the defendant that she was a

three-time loser?

A Yes, we told her.

Q And did you suggest to her that any efforts would be made by you or your department to help her if she cooperated with you, I believe is the expression you used?

A We told her that if she would cooperate with us we would make that fact known to the United States Attorney's Office.

Q Well, in essence, you told her that you would do something to try to help her if she would cooperate with you?

A By telling the United States Attorney's Office.

* * * * * * *

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BY MR. MITCHELL:

Q Was anything said about her being on conditional release?

A I believe so, yes.

Q And that was in the same general conversation you had about her being a three-time loser, and so forth?

A Somewhere in there, yes.

* * * * * * *

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THE COURT: Do you mean that she was questioned first and gave answers and then when that had been finished that this statement was started, or did you mean that the statement went forward while she was talking, I mean this particular statement.

THE WITNESS: No, Your Honor, we questioned her completely, without any typing being done, and Agent Heneghan wrote hand notes, and then when we were completed questioning her completely, then Agent

Heneghan, from his notes, drafted the statement which Mrs. Gardiner signed.

THE COURT: Approximately what time did you leave your office for something to eat and take the defendant Gardiner with you? I understood you to say that you did go out to eat.

THE WITNESS: Yes, ma'am. We left the office approximately some time between 9:30 and 10 o'clock; I can't be specific as to exactly what time it was, but it was somewhere in that range.

* * * * * * * *

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Q Do they have police line-up sheets at the Women's Bureau?

THE COURT: Do they have what?

MR. SHORTER: Police line-up sheets at the Women's Bureau.

THE WITNESS: Yes, they do.

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Q I see.

Well, now, tell me this, sir, isn't it true, sir, that you indicated to Mr. Mitchell that she agreed to cooperate with you, is that right?

A She agreed to give us the statement.

Q That was part of the cooperation, wasn't it?

A Yes, I imagine it was.

Q And in return for that you agreed to speak to the United States Attorney about it?

A To make those facts known to him.

Q I see. Make what facts --

A The fact that she furnished us with the statement.

* * * * * * *

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Q Now, tell me this, sir, isn't that statement substantially identical with this one?

A No, that statement goes further into detail.

Q I see.

THE COURT: When was that statement given?

THE WITNESS: That was on March the 15th, Your Honor.

THE COURT: After she had been taken before the Commissioner?

THE WITNESS: Yes, sir, - yes, ma'am.

THE COURT: She was taken before the Commissioner on the 9th.

THE WITNESS: Yes, ma'am.

THE COURT: You say at 10 o'clock.

THE WITNESS: Approximately 9 o'clock or 10 o'clock in the morning she went before the Commissioner

THE COURT: And so you say that five or six days later then that she signed something else in the cellblock, is that right?

THE WITNESS: Yes, ma'am.

* * * * * * *

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Q Well, now, -- this second statement that you said you got from her was after the conference with Mr. Smithson?

A Yes.

Q And was that after you had told Mr. Smithson that you had promised this young lady that you were going to speak to him to see

what he could do for her in return for her cooperation?

A It was after I told Mrs. Gardiner that I was going to make the facts known to his office.

Q I realize that but now in the meantime you had taken allegedly what you said, this document, up to Mr. Smithson, and for some reason it was unsatisfactory?

THE COURT: He didn't say that.

MR. JOHNSON: I beg your pardon?

THE COURT: You are testifying, Mr. Johnson.

BY MR. JOHNSON:

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Q Now this statement that was devised, sir, by Mr. Heneghan, she signed that after she had agreed to cooperate, isn't that right?

A Yes, she signed after it was typed, yes.

Q No, I am not talking about after it was typed.

THE COURT: He is not talking about that; he is asking about cooperation.

THE WITNESS: Yes.

THE COURT: Listen to the question.

BY MR. JOHNSON:

Q And part of the cooperation was signing the statement, wasn't it?

A Yes.

Q And the cooperation consisted of signing the statement as though it were true, that Mr. Heneghan had composed, isn't that right?

MR. SMITHSON: I object to the form of that question, Your Honor, because it is obviously argumentative.

MR. JOHNSON: I don't think it's argumentative.

THE COURT: Well, you are certainly, Mr. Johnson, saying things that you want to say, or so, and then trying to have the witness adopt your view.

MR. JOHNSON: Yes, ma'am; well --

THE COURT: I will sustain the objection.

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BY MR. JOHNSON:

Q Well, part of the cooperation was signing the statement that Mr. Heneghan presented to her to sign?

A Yes.

Q And now this second statement that was secured from her -- Now, after you got this statement, you took it to Mr. Smithson, I think you said, this one?

A Yes, sir.

Q And of course at that time you made a full statement to Mr. Smithson as to your statement with Doris Gardiner, your conduct with Doris Gardiner?

A Yes.

Q And you told him that you had informed this girl that if she would cooperate with you and give you a statement that you would speak to him and inform him of her cooperation, is that right?

A Yes.

Q And in that connection you also said that you would speak to him about her go-back time, too, didn't you?

A That I would speak to him about her go-back time?

Q Yes, sir.

A No, I had no control over that.

Q I didn't ask you whether you had control over it, sir. Now --

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THE COURT: He is asking you if you said that to Gardiner, the defendant.

THE WITNESS: Yes.

BY MR. JOHNSON:

Q Yes, sir. And you told Mr. Smithson then that when you brought this statement up to him that you had told this girl before she got the statement that you were going to speak to him and inform him of her cooperation?

THE COURT: "Before she got the statement"?

MR. JOHNSON: No, I beg your pardon.

BY MR. JOHNSON:

Q That before she signed the statement that you had told her that if she would cooperate with you that you would inform Mr. Smithson of her cooperation, and you would also speak to him about her go-back time?

A Yes.

Q Now, as a matter of fact, in that connection did you call a man from the Parole Board?

A Yes.

Q And had him present to talk to her also?

A On the 15th?

Q Yes, sir.

A Yes.

Q And in which this go-back time was discussed, is that right?

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A I think it was discussed, yes.

THE COURT: Now, this was on the 15th, was it, or what time?

THE WITNESS: This was on the 15th.

THE COURT: All right.

BY MR. JOHNSON:

Q And did he advise her to sign the statement?

A If memory serves me correctly, I don't think Mr. Davis, the man from the Parole Board, was present when we took the statement from Mrs. Gardiner. He was only there and spoke with Mrs. Gardiner for a very few minutes.

* * * * * * * * *

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BY MR. JOHNSON:

Q Mr. Reed, you have indicated to us that on the 15th, I believe it is, of March this occurred; is that correct?

A The second statement?

Q Yes, sir.

A Yes.

Q This was in re-affirmation of the contents of the first statement, wasn't it?

MR. SMITHSON: Objection, Your Honor. The witness has already said that it was not. It was a much fuller statement.

And since it is not material to what is being proffered at this time -- I haven't objected up to now -- but I think we have gone

beyond what Your Honor was called to rule upon and I object to a continuation of like proceedings.

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THE COURT: I don't see why we are going into something that was given five days after, when this hearing out of the presence of the jury is for the purpose of going into Government's Exhibit 15, for identification.

MR. JOHNSON: Yes, ma'am. I will tell you the theory that I have, Your Honor.

My theory is, as I indicated to the jury, that entrapment of this defendant started when she was in prison and that it was a continuous picture of entrapment, a continuing picture of overwhelming this girl all the way through; that it was not only participated in by Joseph Jackson -- if Your Honor please, I am only trying to tell Your Honor my theory. It may not be -- I may be wrong.

THE COURT: I have told you, too, my theory.

MR. JOHNSON: Yes, ma'am.

THE COURT: I think when the claim is made of entrapment and that they were entrapped into giving a particular statement that we have to look into that and what occurred previous to the time she gave it and that we are not going into things behind that.

MR. JOHNSON: Yes, ma'am.

My only suggestion of that, and Your Honor is probably correct under ordinary circumstances -- I would suggest to Your Honor, however, and I do with all deference to Your Honor's ruling, and I don't mean to prolong this unnecessarily, I mean merely to show this;

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that very frequently the entire mosaic is as consistent with the entrapment to show that at all stages of this thing that the entrapment was there.

In other words, if I show the complete picture of entrapment it may include something after, but what went on after is in confirmation of what went on before.

MR. SMITHSON: Your Honor, to accept that argument is to accept the fact that the prison authorities served to entrap Doris Gardiner when they released her. That is a ridiculous argument, to go into what occurred after March 8th.

MR. JOHNSON: If Your Honor please, I haven't mentioned prison authorities.

THE COURT: Yes, you have. Somebody has been asking this witness a number of questions about what was the conversation when she was seen by somebody that apparently had something to do with her parole. You are going into all of that.

MR. JOHNSON: Of course, if Your Honor wants to rule that it is not admissible, I will abide by Your Honor's ruling.

THE COURT: I tried to indicate that that was the ruling long ago.

MR. JOHNSON: Then, the question, I take it, is objected to -- my asking about re-affirmation, -- and it is sustained?

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THE COURT: Read the last question, please, Mr. Reporter.

(Thereupon, the reporter read the last question propounded to the witness.)

THE COURT: The objection is sustained to that.

Mr. Smithson, you don't expect to try to use, in any way, this subsequent statement, do you, other than to perhaps --

MR. SMITHSON: No, not in my case in chief, Your Honor.

MR. JOHNSON: If Your Honor please, I don't know what that means.

THE COURT: That means that if she takes the stand, you know what they can usually ask. They say something and make a statement and say, "Didn't you on some other date make a statement to the contrary."

MR. JOHNSON: You see, in line with Your Honor's ruling, if I put her on the stand I was going to show what happened up through January 10, and limit it to that.

Now, under those circumstances I wouldn't go into anything that went after the 10th. Then, of course, he couldn't use the statement she made after January 10. I wouldn't touch anything that happened except the entrapment.

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THE COURT: The difficulty about that is that the statement may relate to something before that; before this statement No. 15 was made.

MR. JOHNSON: Of course, we don't know the subsequence -- No. 15.

THE COURT: Mr. Johnson, I do think we must go on with the subject matter of this inquiry.

MR. JOHNSON: All right.

* * * * * * * *

BY MR. SMITHSON:

Q As I understand it, Mr. Reed, you are an expert typist. I believe you taught that at one time; is that correct?

A Yes, sir, I did.

* * * * * * * * * * *

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Q I believe you stated you would conclude, sir, as an expert typist capable of seventy-some words a minute, that if the information requested of the witness in order to fill out certain of those questions, such as on the back, associates, et al., immediately came forward, it wouldn't normally take too long to write this statement?

A No, it wouldn't.

* * * * * * * * *

1071

Q All right. Now, I will ask you, sir, while you were obtaining this information did there come a time you stopped preparing this form?

A Oh, yes.

Q Why did you stop preparing the form?

A Because we were interrogating Mrs. Gardiner.

Q Was she giving you any answers to the questions you were asking?

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A Yes.

* * * * * * * *

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Q I believe, sir, that you have stated that you discussed with Doris Gardiner the fact that she was what is known as three-time loser which, for the record, I take to mean this would be a third conviction

for narcotics; is that right?

A If convicted this would have been her third, yes.

Q All right. Who brought up the question of what they call back-up time?

A Who brought up the question?

Q Yes.

A I believe we asked Doris how much back-up time she had.

Q Was this off the prior conviction of narcotics?

1075

A Yes.

Q And did she tell you?

A Yes.

Q Tell me, sir, with regard to this cooperation or this back-up time, when you talked to Doris Gardiner, what, if anything, did you say you would do by way of your cooperation?

A Make the fact known to the United States Attorney's Office.

* * * * * * * * * * *

1076

Q Do you take shorthand?

A Yes.

Q Does Agent Heneghan take shorthand?

A I can't answer that.

Q How long have you been working with him?

A Approximately a year.

Q I think you responded to Mr. Smithson's question and said you watched him take these notes, didn't you?

A Yes.

Q Did he take these notes in shorthand?

A No.

* * * * * * * * *

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Q How fast does Agent Heneghan type?

A I think he uses the two fingers but he can go quite fast.

Q But he isn't as proficient at typing as you are?

A I don't believe so, no.

Q Was there any reason, then, inasmuch as you are a much faster typist than he, that you didn't type the long document and let him type of the short one?

A No. There was no reason.

THE COURT: Are you his senior there or is he yours?

THE WITNESS: I am more or less his senior.

BY MR. MITCHELL:

Q Well, now, inasmuch as you take shorthand was there any reason why you didn't take down what was said verbatim in shorthand?

A There is no reason.

* * * * * * * * * *

1080

BY MR. MITCHELL:

Q That was the purpose of it, then, wasn't it? The purpose of obtaining the statement?

A Her source of supply, yes.

Q And a statement against other people.

A As to her source of supply, yes.

Q And a statement against other people. Answer yes or no to that.

A Yes.

* * * * * *

1083

BY MR. JOHNSON:

Q Mr. Heneghan, directing your attention to March the 8th, 1962, were you present at the arrest of Doris Gardiner?

A That is correct.

Q Did you arrest her?

A That is correct.

* * * * * * *

1087

Q Well, now, who showed it to her?

A Agent Reed showed it to her.

Q Then you did see it?

A Agent Reed showed the warrant to her, that is correct.

Q Beg pardon?

A Agent Reed showed the warrant to her.

* * * * * * * * *

1095

Q Was there any conversation leading up to her continually denying it?

A In response to our questions she denied, at her house and again in the car, when she first got in the car, that she violated the federal narcotic laws.

Q She denied it?

A That's right.

1096

Q You didn't take the denial for granted? Did you have further conversation with her after she denied it?

A Yes.

Q What was the purpose of that?

A I amplified the basis of the charges.

Q How did you amplify them?

A I explained to her she had sold drugs to an undercover agent, and identified the undercover agent to her by the name she had known.

Q Did she say anything about that?

A Yes.

Q What did she say?

A She recalled the name.

Q What do you mean, "she recalled the name"? That isn't what she said.

A She acknowledged --

Q Tell me what she said. Don't tell me she acknowledge or recalled. Tell me what she said.

A She stated that she remembered Ricky, which was the name I identified.

Q Did she say, "I remember Ricky"?

A I forget how the question went. It may have been 'Do you know Ricky?" to which I got an affirmative answer.

Q You say an affirmative answer. I don't know what that means, either. Tell me what she said, if anything.

1097

A While in the car, enroute to the office, she acknowledge that she knew Ricky.

Q Mr. Heneghan, tell me what the lady said; no characterization of her reply.

A I cannot give you the specific words or the exact words.

THE COURT: Just a minute. You don't have to give the

specific words. You may give the substance if you don't remember the specific words.

BY MR. JOHNSON:

Q What was the substance of her reply, if anyting?

A The substance of her reply was that she knew Ricky.

Q Was there some words spoken when she said that?

THE COURT: He has already told you he couldn't tell you the specific words.

MR. JOHNSON: I don't want to know the specific words, Your Honor.

BY MR. JOHNSON:

Q Were there some words spoken when she did that; were there, sir?

A She conveyed to me in words --

Q No. Were there some words --

MR. SMITHSON: May the witness finish his answer, Your Honor?

THE COURT: Yes, he may. Answer it.

1098

BY MR. JOHNSON:

Q Were there some --

THE COURT: (Interposing) He understands your question, I believe.

MR. JOHNSON: Yes, ma'am.

THE WITNESS: She conveyed to me in words that she was acquainted with Ricky.

BY MR. JOHNSON:

Q Not in a grunt?

A No, sir.

Q You didn't hear her grunt during the whole period of time, did you?

A I don't recall her grunting.

* * * * * * *

Q He was driving and talking, and you were talking to her while he was driving, both of you were talking to her; is that right, while she was in the rear seat?

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A That's right.

Q And that continued all the way down to the Narcotics Office?

A That is correct.

* * * * * *

Q I see. What did she say?

A She acknowledged she recalled Ricky.

* * * * * * * *

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THE COURT: Did she ask any questions that you recall?

THE WITNESS: I recall no questions.

* * * * * * * *

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Q When you got into the room what happened first?

A We fully appraised her of the charges against her, and proceeded to talk with her and discuss with her the identity of the source of her own supply.

Q Did you obtain a statement from her then? The first thing you did was to have a conversation with her which finally resulted in her telling you the source of supply; is that right? Is that the first

thing?

A That was the immediate objective of the conversation.

* * * * * * *

Q What did Sergeant Reed do while you were taking notes? I mean, Narcotics Officer Reed?

A He asked Doris questions.

1103

Q So, he was asking questions. And were you asking questions?

A I was.

Q And you were taking notes?

A I was taking notes.

Q Was he taking notes?

A My recollection is he was.

Q Was he taking them in shorthand?

A I don't recall.

Q He uses shorthand, doesn't he?

A I don't know if he does.

* * * * * * *

Q Did you compose the statement you got Doris to sign eventually?

1104

A I prepared that statement, yes.

Q Did you prepare it from your notes?

A Yes, I did.

Q Did you use his notes, too?

A I did not.

* * * * * *

Q Did there ever come a time when it was understood between you and Agent Reed that you were going to prepare the statement?

A I advised Agent Reed I was going to make the written statement.

Q You were going to make the written statement?

A Prepare or type a statement of Doris Gardiner.

Q I see. Tell me this, sir: During the time and before she agreed to make the statement did you tell her that if she would cooperate with you that you would tell Mr. Smithson?

THE COURT: Which statement are you speaking of?

MR. JOHNSON: The oral statement.

THE COURT: The oral statement?

MR. JOHNSON: Yes, ma'am.

1105

BY MR. JOHNSON:

Q Did that happen?

A Yes, sir.

Q Did you also discuss her parole, her back-up time?

A We asked her questions relating to her parole status.

Q Parole status. Did you talk to her with regard to her back-up time? Did you talk to her about that?

A I asked her how much time she had, yes, sir.

Q Did you say you had made some representation to someone about that because of her cooperation?

A We stated we would appraise the Parole Board of any cooperation she extended to us.

Q The cooperation included signing this statement, didn't it,

that you prepared, didn't it?

A The cooperation began before that.

Q I mean concluded. Did you understand my question, sir?

A Let me have it again.

Q The cooperation included signing the statement, didn't it?

A That would be correct.

Q And, now, this statement you said was for the purpose of getting her source of supply and that was the reason for taking her there, wasn't it? That's right, isn't it, sir?

1106

MR. SMITHSON: Let the witness answer, please.

MR. JOHNSON: I am trying to let him answer.

BY MR. JOHNSON:

Q Isn't that right, sir?

A That was one of the purposes, yes.

Q What was the other purpose?

A The other purpose was to learn the extent of her narcotic operations.

Q Those were the only two purposes to take her there? Is that right?

A Take her where?

Q Where you took her.

A You mean to our office?

Q Yes.

A No, it wasn't the only purpose.

Q Sir?

A It wasn't the only purpose.

Q You mentioned two.

A You asked me the purposes of the statement, sir, and I gave you the answer.

Q The purpose was to obtain information as to the source of supply and her connection with it. Those were two purposes you took her to your office for, weren't they?

A Are you speaking of apart from the statement?

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THE COURT: Just tell him all the purposes you took her to your office for.

THE WITNESS: She was taken to our office to be processed.

* * * * * *

Q Didn't you just tell me immediately as you came in the first thing you did was to talk about her source of supply? Didn't you tell me that?

A Yes, I did.

Q And I ask you, did you ask questions and Agent Reed ask questions -- I asked you that and you said yes. Is that right?

A That is correct.

* * * * * *

1109

Q Her Honor asked you, a few moments ago, to give all the purposes.

Do you want to enumerate them so I will be sure?

A My testimony at that time concerned the statement. I thought we were still talking about the statement. The purpose of the visit to the office would be entirely a different thing.

Q Now, Mr. Heneghan, Her Honor told you to tell all the purposes.

THE COURT: Do you want him to tell you?

MR. JOHNSON: Yes, ma'am.

THE COURT: All right.

BY MR. JOHNSON:

Q All the purposes, sir.

A The visit to the office was primarily to obtain line-up sheets, fingerprint cards, personal history data, and other information normally concerned with the processing of a prisoner.

Q That is what the purpose was. That is one. Any others?

A To discuss with her those details concerning her activities that would be pertinent to our processing.

1110 Q Any others, sir?

A We also, I believe, wanted Agent Broadnax to confront her.

Q You wanted that to happen, did you?

A That's right.

Q That is after she admitted all about it? What did you want Agent Broadnax to confront her for after she freely admitted all of it to you?

MR. SMITHSON: Your Honor, this is argumentative and still has nothing to do with the admissibility of the statement.

THE COURT: The objection to the question is sustained.

BY MR. JOHNSON:

Q When did you confront her with Agent Broadnax?

A It was after Agent Broadnax had returned to the office from his meal. I would estimate the time would be about 7:30 or 7:45. Somewhere along there.

MR. JOHNSON: I think that is all.

1113 MR. JOHNSON: If Your Honor please, Your Honor asked me

before lunch if I intended to put on any witnesses. I propose to put on Mr. Wertleb, the Commissioner, to show his availability on the 8th, and I also intent to put on evidence of entrapment of the Defendant Gardiner.

THE COURT: The evidence of entrapment? This isn't the time for that.

MR. JOHNSON: Well, here is what I thought, if Your Honor please. I may be wrong in my idea about it. I thought if this girl was entrapped to commit these offenses and that was shown to the Court as a matter of law --

THE COURT: No, the way that is, you put that on before the jury and you have the burden of --

MR. JOHNSON: Showing it.

THE COURT: -- showing the entrapment. Then the Government has the right to come back and show the predisposition to commit the offense.

MR. JOHNSON: Yes, ma'am, that's right. Of course, if it is existing as a matter of law, of course, however, on the other hand, Your Honor would then be required to direct a verdict without regard to the jury.

THE COURT: Well, I certainly wouldn't be in an position to direct any verdict without knowing what all the evidence was.

1114 MR. JOHNSON: Yes, ma'am. That's why I intended to put it on now in case Your Honor determined it was not a matter Your Honor saw fit to direct a verdict upon, why, then it would be submitted to the jury and if it was a matter Your Honor thought she should direct a verdict upon, then the question of the admissibility of the statement thereafter would also be part and parcel of it and Your Honor

would then have that in addition to the question as to whether this defendant was brought, as that warrant says, immediately after arrest forthwith to the Commissioner's office.

THE COURT: I don't think you are now entitled to show anything about entrapment.

MR. JOHNSON: Very well, if Your Honor please. I also wanted to show it in the nature of a motion to suppress it, too, because I think if this statement was obtained from this defendant as a result of entrapment, and also as a result of over-reaching --

THE COURT: The statement obtained by entrapment Entrapment has to do with an offense.

MR. JOHNSON: Yes, ma'am. It has to do with an offense, and I am not urging that entrapment per se, in and of itself, means that the statement is inadmissible, I don't mean that.

THE COURT: If you are urging entrapment you are urging

1115 entrapment.

MR. JOHNSON: I see. Very well. In the light of Your Honor's ruling, if you will not consider that at this time as not being pertinent to the inquiry, I want to call Mr. Wertleb.

1118 DORIS L. GARDINER,

defendant herein, was called as a witness in her own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Directing your attention to the period subsequent to February the 15th, 1962, were you employed at the Gordon's Market

A I was.

MR. SMITHSON: Objection, Your Honor, this is not material

to the question of the admissibility of this statement, where she was employed.

MR. JOHNSON: Very well.

BY MR. JOHNSON:

1119 Q Now, directing your attention to March 8th, were you in the District of Columbia that day?

A I was.

Q All day?

A Yes.

Q Directing your attention to later on that afternoon, did you see any other people who identified themselves to you as members of the Narcotic Bureau?

A Officers Reed, Heneghan, Jones, Wurms, as I later learned, and two other officers.

Q At or about what time did you see them?

A About five after four.

1120 THE COURT: Just a minute. Could you turn that michophone louder, please?

THE WITNESS: I asked what was he looking for. He said he was looking for narcotics. I told him I didn't have any narcotics on me or in my house and he told me that he had a warrant for my arrest.

I asked to see it and he said it was at the Narcotics Squad.

1121 Q Did there come a time when you arrived at the destination. Did you have any other conversations with the officers in the car during the time?

A I asked who I made the sale to, you know, who they accused me of making the sale to. They said Broadnax. I told thei I didn't

1122 know anybody by the name of Broadnax. They told me Broadnax was a

federal agent who had been in my home on several occasions. I asked with who and they didn't answer at that time. So I still denied selling any drugs. I continued to deny that all the way to the Narcotics Squad.

Q Now, in this room you were carried there, I take it, from your testimony, by Officers Reed and Heneghan; is that right?

A And Jones.

Q And Jones?

A Yes.

1124 Q Did you see the man you came to know as Agent Broadnax there at that time?

A No.

Q Now, what happened after that. Did anybody ask you any questions, and what, if any, questions did they ask you?

A Officer Reed began to ask me who did I get narcotics from. I told him I didn't get any narcotics. Then he continued to ask, they told me they knew I had been selling drugs because the agents from the Department had been working for me. I still denied selling any drugs to any agents.

He asked me at that time did I know a Joseph Jackson. I told him I did. He said did I ever remember a brown-skinned fellow coming to my home with Joseph Jackson by the name of Ricky. I said I did. So he told me that was the agent.

Q I see. Now, did you then admit that you had sold narcotics, at that time?

A No.

Q Now, what happened after that, what form did the questioning take? Did they show you anything?

A On the desk Officer Heneghan was sitting at was directly in front of the door. He had some papers and some files and he showed me three pictures.

1125 THE COURT: What?

THE WITNESS; Three pictures.

THE COURT: Three pictures?

THE WITNESS: Yes.

BY MR. JOHNSON:

Q Pictures of people?

A Yes.

Q And he asked you to identify those pictures; is that correct?

A Yes, he did.

Q Did he recite any of the travels and what you did?

A Yes, he did.

Q Did he indicate to you where he had seen you and all that type of thing?

A He told me that he had been watching, that officers had been watching my home and where I worked for approximately 77 days or seventy-some days.

Q Yes?

A And that he had seen me in the company of known drug dealers, some drug addicts.

Q I see. Now, directing your attention to -- did there come a time some time during the course of that evening when you did not see the man you had known as Ricky

A Officers Reed and Heneghan continued to ask me questions about different people that I knew that had been selling drugs. I told them

1126 that I hadn't seen very many people since I been home, that I was working,

and he asked me did I want to make a statement about drugs. I told him that I did not. Then he asked me did I know -- he asked me first did I know a Junior Jackson. I told him I did.

He told me he had seen Junior Jackson coming out of the store and that he had reason to believe he was my source of supply, that he had been told by Joe Jackson that it was, and that he had seen Charles Matthews come into the store and did I know him. I told him I did. He asked me had I gotten any drugs from Charles Matthews and I told him I had not.

Q Now, did there come a time after that when you did see Agent Broadnax?

A They asked me if I wanted to make a statement concerning my activities that I was charged with after he had read certain days, read the dates, read where they had seen me, they read that they had seen me in the 2100 block of Maryland Avenue in an apartment that they knew was selling narcotics. They told me that they had seen me on several occasions speaking with Charles Matthews. They told me that they had seen several other known addicts coming in and out of the store. I told them I still didn't want to make a statement.

Q Tell me this. Did you ever ask them to let you use the

1127 telephone or get in touch with anybody?

A Not until I had seen Broadnax.

Q I see. Did there come a time when you did see Broadnax?

A Officer Reed went to the door. I don't know who he spoke to. That was about 7:30. About eight or between eight and eight-thirty Broadnax came into the narcotics room.

Q Were you surprised to see him?

A Yes, I was.

1127 Q And what, if anything, did you say to him?

A He walked to me and handed me a badge -- he had a badge in his hand and said he was a federal narcotics agent. I asked him, I asked him why would you all do this to me.

Q What did he say about that?

A He said it was one of those things, Joe was up tight.

THE COURT: Just a minute. What was that answer?

THE WITNESS: He said it was one of those things, Joseph Jackson was up tight. I asked him what did he mean by that and he said he was in trouble and he had gone along with the narcotics man.

BY MR. JOHNSON:

Q Now, you have indicated to the Court that you were arrested shortly after four and that this was some time shortly after 7:30 when you saw Agent Broadnax?

1128 A It was after eight, between eight and eight-thirty I saw Officer Broadnax.

Q I see. Now, during the period from four up until this time, had the questioning by these officers been continuous?

A Yes, it had.

Q Was it interrupted for any reason or did they remain with you all during that time?

A It was a lot of interruptions.

Q Beg pardon?

A It was quite a bit of interruptions.

1128

1129

Q Then the questioning was continuous from the time you got there up until shortly after eight, except for the interruption that you related to the Court; is that correct?

A Yes, when one would go to the door the other would still question me.

Q Now, during the course of this questioning, did there come a time when some questioning was made as to what was going to happen to you?

A When I asked why would Joseph Jackson do this to me, I told them I had four years' back-up. They said they knew that, they had been to my parole man, Mr. Gordon Davis, and told him I had been dealing in narcotics.

Q And what else was said about the present charges, if anything?

A They told me that they didn't want me, that they wanted some other people and that what had happened to me was something that I wouldn't carry Joseph Jackson to a connection and they had to get me in order to get other people.

THE COURT: Read that answer.

(Whereupon, the reported read the last answer of the witness.)

BY MR. JOHNSON:

Q Now, you have indicated, you said they didn't want you, but that you would give them a connection to the informer so they had to get you to get the connection. Would you explain to

1130 Her Honor what is meant by that?

A They told me they had five or six sales on me, which they read the date, and they also read the surveillance and told me that if I would cooperate with the Police Department they would drop all charges against me and I would go back and do my good time and they would also carry me before the D. A. and he would also verify their statements that all charges would be dropped against me.

1132 Q Now, I am going to show you this paper which is marked Government's Exhibit No. 15. Do you recall signing that paper?

A I signed this paper in the cell block downstairs.

Q You did?

A In the presence of the female Marshal, Miss Elinore.

1133 But I signed this paper along with some more papers that I signed after I had been to Mr. Smithson's office.

Q Along with some other papers?

A Yes, it was about 15 other sheets of paper.

THE COURT: Fifteen other pieces of paper?

THE WITNESS: Sheets.

THE COURT: Sheets of paper?

THE WITNESS: Yes.

BY MR. JOHNSON:

Q Do you know what date that was? Can you fix the time?

1133

A I think it was around March 15th.

Q Now, that paper recites it was made on the 8th of March. Did you notice that the the time that you signed it?

A No, I did not.

Q I see. And --

A I had been in Mr. Smithson's library all that day and I was tired and di not read any -- I did not read the statements over again, but I do admit making them.

Q I see. Now, you said you had been in Mr. Smithson's office all day?

MR. SMITHSON: The word was library, for the

1134 record.

BY MR. JOHNSON:

Q Now, where is this library located in the Court House?

A I think it's on the sixth floor of this building.

Q Now, was anybody present with you at that time when you were on that floor?

A Miss Elinore from the Marshal's Office carried me there, Officer Heneghan, Officer Reed, Mr. Smithson, later Mr. Gordon Davis came there, and Mr. Smithson asked me if I knew a William Tinney. I told him I did not. He said he was an attorney he was sending in to me. About 15 minutes later Mr. Tinney came in.

Q And was it before or after this paper was signed?

A Agent Heneghan and Agent Reed had Miss Elinore keep hold of me here late that afternoon and I signed it after they

1134 had finished typing it up. I think Mr. Smithson's secretary typed it up.

Q Was that before Mr. Tinney came or after he came?

A What do you mean?

Q That that paper was signed downstairs.

A It was after.

Q He came.

MR. JOHNSON: Your witness.

1136

CROSS EXAMINATION

Q In fact, Mrs. Gardiner, you are serving your good time now; is that right?

A Thanks to you, Mr. Smithson.

Q Thanks to the request you made of me to serve it,

1137 isn't that true?

A I have made no request to you about any good time.

1138 Q Isn't it a fact, Mrs. Gardiner, that when you did see Ricky you told him, no, take him away, I don't want to see him, I know what I have done?

A Would you like me to tell you exactly what I said?

Q Did you or did you not make that statement?

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MR. JOHNSON: Tell us what statement you made.

MR. SMITHSON: Objection. I move Mr. Johnson

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MR. SMITHSON: Objection. I move Mr. Johnson

1138 be restricted to his redirect.

MR. MITCHELL: I think that he should afford the

1139 same courtesy that he expects us to extend to his witness. Your Honor, I can't stand this. I think this witness is entitled to the same courtesy he asks for his witnesses.

THE COURT: Now, he is entitled to have his examination without interruption. You will have you chance on redirect, Mr. Johnson will.

MR. MITCHELL: No, ma'am, that isn't what I am arising to object to, if Your Honor please. The same thing Your Honor has said throughout. If a question is asked of a witness the witness should be allowed to answer.

THE COURT: The witness did answer, Mr. Mitchell.

MR. MITCHELL: I think he should be more courteous, that's all.

BY MR. SMITHSON:

Q And on this particular occasion you say you wanted to know why a man was put in to you and that this fellow Ricky, or Broadnax, told you at the time that you confronted him that he had Joe Jackson up tight, is that what your testimony is?

A Not only did he tell me that, Officer Reed, Officer Heneghan and Officer Wurms also told me that.

Q Now, on this particular occasion, you talked to those agents, is it not a fact, from approximately 5:05 to about, oh, 5:20, when you were asked what your connection was and did you not hesitate, pause, and say, in answer to the question, is it Gate, yes?

A I did not say that. Gate was never mentioned to me until after 8:30 or quarter to nine.

Q Is it not a fact that at this particular time you told the agents, when they asked you if you would cooperate with them, having advised you that they could do nothing about your good time, or anything more than represent your cooperation to me, that it would be your word only against Gatemouth?

A I don't think you can tell me, you weren't present there, Mr. Smithson.

Q I don't believe the answer is responsive. I believe the witness can be admonished to listen. I think she is understanding the question and to answer it.

THE COURT: Just a moment. Mrs. Gardiner, you are to listen to the question that is put to you and then you

1141 are to answer the question.

MR. JOHNSON: May it please the Court: May I again ask the Court to ask Mr. Smithson to get another Assistnt United States Attorney. I think it is perfectly obvious that this defendant, I have outlined to Your Honor her relationship with Mr. Smithson, and she has personal feelings of Mr. Smithson

other than matters here.

1141

THE COURT: Mr. Johnson, your motion is denied.

1144

Q Did the agents tell you that Matthews told you he would let you have some heroin on consignment to get you started in the drug traffic for the purpose of making some money?

A No.

MR. JOHNSON: Just a second. If Your Honor please, I believe a certain amount of latitude is permitted to test credibility. He can't impeach on collateral matters. What he is doing is taking the statement and asking whether the statement and asking whether the statement is true. Now, that isn't impeaching her testimony here.

THE COURT: Now, I get it from what she said, I got the impression that she was saying that they just put things down and she went along with them.

THE WITNESS: I did, Your Honor.

1145

THE COURT: You did say that?

THE WITNESS: Yes, I did.

THE COURT: That is the purpose of this examination.

MR. MITCHELL: Thenmay I arise and make my objection, if Your Honor please? I object to the going into of the statement. I think your Honor can read the statement in camera but I certainly object insofar as my defendant of this subterfuge engaged in by Mr. Smithson to get the statement into the record.

MR. SMITHSON: I think it is obvious why Mr. Mitchell is objecting.

THE COURT: The objection is overruled.

1146 MR. SHORTER: Your Honor, I hate to interrupt but this seems to me to be a very abusive way to do things. I think Mr. Smithson is putting these questions to her based on what is contained in the statement. The statement is not evidence and I don't think the statement should be read in evidence in this sort of fashion by Mr. Smithson. I think Mr. Smithson is putting these questions to her based on what is contained in the statement. The statement is not in evidence and I don't think the statement should be read in evidence and I don't think the statement should be read in evidence in this sort of fashion by Mr. Smithson. I think if she contends there is something in the statement she didn't say she should be afforded the opportunity of looking at the statement and saying what it is rather than putting it in the record at this pint.

MR SMITHSON: Your Honor, I don't need Mr. Shorter's help. The witness was shown the statement by Mr. Johnson and the witness denied making any statement or signing any statement on March 8th and I have a perfect right to cross-examine her.

MR. JOHNSON: If Your Honor please, I don't want to be quibbling about this thing. I think he is entitled to cross-examine as much as he pleases but I haven't asked this witness one question in that statement.

THE COURT: I tried to explain to you a moment ago, Mr. Johnson, that the witness had said, in effect, that the

agents had --

MR. JOHNSON: Not told her.

THE COURT: -- put this in and she had gone along with it and she said awhile ago that thtat was what she said.

MR. JOHNSON: That is correct.

THE COURT: All right, If she is saying that, he has a right to test her on that by asking her questions and your objection is overruled.

MR. JOHNSON: I agree with Your Honor, I think Your Honor is perfectly correct.

THE COURT: Let the examination go forward.

MR. JOHNSON: May I say this one thing --

THE COURT: No, you said enough already.

MR. MITCHELL: May I say something, Your Honor, because I don't agree with Your Honor.

THE COURT: Whether you agree or disagree, I have ruled.

MR. MITCHELL: May I state for the record what my position --

THE COURT: You have already stated for the record --

MR. MITCHELL: I haven't stated what my position is as to this, Your Honor.

THE COURT: No, I am not going to have it at this time. This continuous objection so that this cross-examination

cannot go forward --

1154 MR. JOHNSON: Just a second. What has this got to do with it, if Your Honor please? We are talking about a statement that was made. I limited my examination to what happened on March 8th. I said, all right, I wouldn't go into anything except the inadmissability of the statement, bow it was gotten. I started it on March 8th and asked her where she was that morning. I started over and asked what happened directly after that. It certainly hasn't anything to do with the direct examination. He has constantly asked this girl what these people told her. He hasn't asked her once if these things are true. He didn't ask her once if that is so. He asked her if she told them. She is merely denying, according to her testimony, that she told them these things. She hasn't once said that one of the things isn't true, not one tome has she said that. That is the viciousness of this practice. He has asked her continually, did you tell them this, and the testimony already is that this statement was completely made up by Mr. Heneghan in his own composition, but all of the time that this examination has been going on he has consistently designedly asked this girl, did you

1155 tell them what is in this statement.

THE COURT: Mr. Johnson, he has a right to test her statement if she doesn't know what was in the statement and it was made up.

MR. JOHNSON: Oh, yes, I think, if Your Honor please, but I thought that Your Honor gathered the impression, and I did at first, that he was testing to see whether she was going to

deny that that statement was true. But, on the other hand, he hasn't done that. He is, by use of this way asking these questions, he is asking her specifically if she told them what's in this statement and that isn't what happened.

MR. SMITHSON: Your Honor will recall the witness stated that at no time did she ever give Matthews any money for any heroin in this period of time.

THE WITNESS: I still say I didn't.

MR. MITCHELL: Just a moment. I would object to that, if Your Honor please. He is the one that asked that question. It is a collateral issue to anything asked by Mr. Johnson. He is bound by the answer. He cannot build up a straw man and then throw it over.

MR. SMITHSON: Your Honor, I didn't notice in the record if Mr. Mitchell entered an appearance for this defendant.

MR. MITCHELL: I happen to be in this case. I represent two defendants. My appearance is quite well felt.

MR. SMITHSON: Not for the defendant on the stand.

BY MR. SMITHSON:

Q Going next, did you tell the agents regarding the transaction on the 21st of February of 1962 that you had one with with Ricky at the Supermarket where you worked?

A I did not.

MR. JOHNSON: I object to the form of the question. If Your Honor please.

THE COURT: The objection is overruled.

United States of America)
)
v.) Criminal No. 289-62
)
Charles Matthews, Et Al.,)
)
Defendants)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Washington, D. C.
September 27, 1962

1177 THE COURT: What is it that you want to ask Mr. Smithson?

MR. JOHNSON: Well, I wanted to elicit from Mr. Smithson whether it was not true that this case to his knowledge, and by virtue of his advice, didn't start sometime in September and that it was the prime purpose and objective of the efforts - -

THE COURT: Started in December?

MR. JOHNSON: September.

THE COURT: September?

MR. JOHNSON: Yes, Your Honor. And whether he didn't supervise and direct and advise with the narcotics agents about their quest with regard to at least three of these defendants at this time.

THE COURT: Well, I don't think you are entitled to ask him that, Mr. Johnson.

1178 THE COURT: Well, regardless of what you stated to the jury, this inquiry now at this time is about this statement that was made by Doris Gardiner.

Now, my inquiry is: What did you want to ask him about that?

MR. JOHNSON: Well, by and large it would depend a great deal upon his answers, but in essence it would be this, to develop this, that Mr.

Smithson, as the United States Attorney and by his statement to Your Honor yesterday, that he was engaged in the investigation of this case, that that was his duty and post, as an Assistant United States Attorney; that he advised and talked with these agents during the course of their investigation; that he advised with them about the propriety of warrants sought for the arrest of the various defendants. He made some statement that he was not certain as to whether he knew of the arrest of Doris Gardiner, and the question would come of whether he knew of the delayed arrest of the defendants Matthews and Phelps, which occurred as the result of a warrant of arrest that was executed, I believe, on the 27th day of February, but which was delayed significantly until one hour after the statement had been obtained from Doris Gardiner.

And also that this conspiracy was part and parcel of it, was exemplified in his not only advising, or failure to advise these agents, to obey the directions of that warrant.

THE COURT: Well then you didn't want to ask him anything about this statement that is in issue here, whether of voluntary or involuntary character. You didn't want to ask him anything about that?

MR. JOHNSON: Yes, I did.

THE COURT: Well that is what I am trying to find out.

MR. JOHNSON: I wanted to ask him whether he didn't talk to these agents about the necessity or propriety of a second statement, having looked at the first statement and the necessity for getting her to execute a second one downstairs in the Marshal's Office, and at that time whether he did not talk to the Parole Officer first, of this young lady, whether he

didn't call an attorney for her that she didn't know and that he recommended to her and that he permitted this attorney to come in and talk with her, as a result of which the statement of the 15th was obtained and the signature on the statements down in the Marshal's Office was done as my client says it was done.

THE COURT: You may ask him the question about the statement, but none of these questions that you want to find out about the investigation and when it was started and how it was conducted is properly a part of this inquiry that we have here.

You want to ask him something about this statement that the Court has before it?

MR. JOHNSON: Yes

1180 FREDERICK G. SMITHSON

was called as a sitness for the Defense, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, sir?

A Frederick G. Smithson.

Q And your occupation, sir?

A Assistant United States Attorney.

Q Were you so employed and engaged on or about March the 8th, 1962?

A I was.

Q Directing your attention to the arrest of the defendant Gardiner, when and at what time did you know of the arrest?

A To the best of my recollection, and upon consultation with the agents of the Federal Bureau of Narcotics, on March 9, 1962.

Q Is it your testimony, sir, that you did not know of the arrest on March 8th?

A To the best of my recollection I did not.

Q Is it your testimony, sir, that you don't have any independent recollection of whether you knew of it on the 8th or not?

A I have no recollection of any knowledge regarding the arrest of Doris L. Gardiner on 8 March 1962.

Q Have you any written memorandum in your office reflecting the time, the manner, or the occasion of the arrest of Doris L. Gardiner, sir?

A I do not.

Q Directing your attention, do you have a memoranda or any written paraphernalia concerning the approval, discussion, notes taken about the arrest warrant for Doris L. Gardiner?

A I believe the question is rather multiplicious. Will you break it down, please?

Q Yes, I will. Did you or did you not, sir, advise and consult with the agents about the sufficiency or lack of sufficiency of the arrest warrant for Doris L. Gardiner?

A In this regard, sir, with regard to this particular case I cannot affirmatively state yes. I dannot say that I did not.

Q All right, sir.

A I may well have, as that is one of my assignments.

Q As a matter of fact, sir, was there any other person in your office

at that time to your knowledge, sir, that had anything to do with the arrest warrant for Doris L. Gardiner?

A To my knowledge I don't know that I did or anyone else did. Someone probably did.

1183 Q And did you receive any papers from the Narcotics Agents with regard to any statement she had made at any time after March 8th, sir?

A I can say this to you, Mr. Johnson. I know from records of the Federal Bureau of Narcotics that they conferred with me relative to the arrest of Doris L. Gardiner and other defendants on March 9th of 1962.

Q Now, with regard to March the 15th, did you have a conversation with the defendant Doris L. Gardiner?

A I would say yes.

Q At that conference how did the defendant Doris -- well, where did that conference take place, sir, physically with reference to the United States District Court Building?

A It took place on the third floor in the Office of the United States Attorney, in the southeast office in that third floor.

1184 Q Now, did you have any recordings made of your conference with Doris L. Gardiner that day, sir?

A Mr. Johnson, to my knowledge no recording was made of that conference because it lasted to my knowledge less than three minutes.

Q Now, with regard to this conference, how was her presence brought about?

A I was advised that the Defendant Doris L. Gardiner desired to be a witness for the Government and to appear before the Grand Jury and to to-

testify for the Government at the trial of the other defendants here under indictment. I was given this advice by the agents of the Federal Bureau of Narcotics, and I requested the United States Marshal on a written form to bring up Doris L. Gardiner for the purpose of conferring with me as to that.

Q Now during the conference with Doris Gardiner, did the question of counsel come up?

A During the conference I think it would be best illustrative for your purpose, Mr. Johnson, if I would tell you exactly what I said to her, if that would suffice?

Q Well, sir, first whether the question of counsel came up, sir?

A It did, sir. I raised it.

Q And did you or did you not, sir, make a suggestion as to who counsel should be for her, sir?

A I did not, sir. I asked her if she had any or if she knew any that she wanted, and she replied "no."

Q Did you make any suggestion of a specific attorney's name to represent the Defendant Doris Gardiner?

A I told her I felt she should talk to her counsel before she talked further to me or the agents, and I told her I would ask Mr. Tinney to confer with her.

Q At that time, sir, did she or did she not know Mr. Tinney?

A I do not know, sir.

Q Did she make a request that you call Mr. Tinney, sir?

A She agreed and stated that she did want to talk to an attorney.

Q An attorney?

A That is correct.

THE COURT: Mr. Johnson, just a minute. Very few of these questions have anything to do with the subject that the Court has before it, which is the matter of this statement.

MR. JOHNSON: Well if Your Honor please, this is all preliminary, I outlined it to Your Honor exactly as I am developing it.

THE COURT: Yes, but I told you that when you got through outlining, that the subject matter that you were to ask him about was the subject that is before the Court at this time, which is about this statement.

1186 BY MR. JOHNSON:

Q And you said that you advised Doris Gardiner that she should talk to an attorney before she made a statement, sir?

A Any further statement, I told you, Mr. Johnson.

BY MR. JOHNSON:

Q First, when you talked to her, did you elicit from her whether she should make a statement or not, whether you advised her what her rights were, sir?

A Sir, I specifically advised her of her rights. I told her she did not have to talk to me, she didn't have to talk to the agents, she didn't have to make any further statement if she didn't want to, and that I thought she should talk to an attorney regardless of the fact that she had already made a statement.

Q Now with regard to that did there come a time when Mr. Tinney came?

A There did.

Q Was that before she made any statement, sir?

A That would - -

THE COURT: Just one minute. Before this date of the 15th had you seen this statement labeled "Government's Exhibit 15 For Identification"?

THE WITNESS: I knew of it, Your Honor. I definitely knew of it and it is my recollection that I had seen it. I cannot specifically state on what date.

1188 Q And how long did your first conference last with her before Mr. Tinney came?

A I doubt if that conference, sir, lasted a minute and a half.

1189 Q I see. Did you tell her about her rights with regard to the first or the prior statement, sir?

A No, sir.

Q I see, sir. Now with regard to -- do you know whether she had money to provide counsel of her own at that time?

A Sir, she informed me that she did not, and in fact informed me she had been owed a sum, a salary, from the market she formerly worked for, that they never paid her, and at my request agents have attempted to speak for the owner to pay it.

Q With regard to this conference, and after this conference with Mr. Tinney, is that the time when you obtained a further statement from her, sir?

A I never obtained any further statement from Doris L. Gardiner.

Q Was a further statement after this conference obtained?

A An additional amplified statement was obtained on the 15th of March.

Q Can you tell us how and at whose suggestion that was obtained?

A By whose suggestion, sir, do you mean to Doris Gardiner or to the agents?

Q At whose suggestion was the further statement obtained from Doris Gardiner?

A Mine.

Q And did you make that request of the Defendant Doris L. Gardiner?

A I told her I desired one and asked her if she was willing, yes.

Q And she indicated she was?

A She certainly did, sir.

Q And was Mr. Tinney present during the time of the taking of that statement?

A Well I don't know, sir, I was not present when it was taken.

1191 Q Who took that statement from her?

A I have been informed from the document that it was done by Agents Heneghan and Reed, sir.

Q Was it done at your direction?

A It was done at my request.

Q You requested Agents Heneghan and Reed to obtain this statement from her?

A I requested that she be interviewed and a further statement, if she were willing, obtained. I did not specifically direct any agent or agents to do so.

1192 Q Now you indicated to Her Honor that your first question to this defendant, whether that she wanted to make a -- that she should not make any further statement until she had counsel, and you went about to secure counsel for her, sir. Now, is it not a fact, sir, that you wanted that further statement, in the matter of your judgment as a United States Attorney?

A The premise of your question, or the recitation of my testimony heretofore, is in error, Mr. Johnson, as to what I represented to the defendant. My purpose, however, for obtaining that statement -- this particular defendant had acquainted the agents of the Federal Bureau of Narcotics of her involvement with the Defendants Matthews and Phelps, and a person known to her as "Roach," later identified, covering a period from December until March the 8th. Obviously the statement, which is Government's Exhibit 15 For Identification, was not as full as I would like to have in the preparation of any case that I might consider for submission to a Grand Jury where the witness-defendant desires to testify as to the multitude of transactions which she had indicated she had had with the other defendants.

Q Specifically, sir, I think you answered everything except the question -- was it not your judgment, sir, as a United States Attorney, having viewed the statement of March the 8th, that you wanted a further statement?

A Sir, this question must be broken in two facets: The statement as viewed as Government's Exhibit 15, in my opinion was perfectly satisfactory to us as an admission or confession against the defendant as a

defendant. If she desired, as she has expressed that she did, to appear before the Grand Jury as a witness for the Government, yes, I wanted an amplified statement, sir.

Q I see, sir. Now, will you answer this, sir: Did you not want this second statement because you, as a United States Attorney, had doubts as to the legal validity of the first statement?

A No, sir.

Q Now, Mr. Smithson, you said a "further statement." Is it your testimony now, sir, that on the morning of March the 16th, at that time you had read and were familiar with the statement of March the 8th? Dated March 8th -- December 15th --

A Excuse me. You speak of March the 16th. I have no recollection of talking to the defendant on the 16th of March.

Q Beg your pardon. May I withdraw that?

Is it your testimony now, sir, that on March the 15th -- that is the date that you saw the Defendant Gardiner -- that at that time, and when you first talked to her, you had seen and were familiar with all of the circumstances surrounding the obtainance of the statement of March 8th?

A I will tell you, sir, that I had seen the statement to the best of my recollection, that I had orally conferred with the agents beginning on March the 9th with regard to this particular case, and, parenthetically, with regard to several others. I had seen, and generally knew, the contents of Government's Exhibit 15 For Identification prior to seeing the Defendant Gardiner.

Q Were you at that time familiar with the method by which it had been obtained?

A Generally.

Q Specifically, sir?

A I was not present, sir. I could not have been.

Q Were you informed by the narcotics officers in charge of the arrest and interrogation of the Defendant Doris L. Gardiner on March the 8th -- were you informed by them, sir, as to the manner and method by which that statement was obtained?

A They told me she had been arrested by agents of the Federal Bureau of Narcotics and that she had made a statement, sir, which is Government's Exhibit 15.

Specifically as to what questions were asked and what questions were answered, what room the statement was taken in, how many agents were present, I do not recall having that information.

Q Were you informed at that time, sir, as to the circumstances of any promises or inducements offered to the defendant to make that statement?

A I was aware, sir, of the fact that the defendant, prior to talking to her on the 15th, that the defendant had back-up time. I was aware, sir, of this because I have a recollection of advising this defendant that I could do nothing about her serving her back-up time and that I would not and could not dismiss the charges against her for her assistance in this case.

Q I see.

A I further, Mr. Johnson, recall that the question of her being a three-

time loser, as the phrase is known, was brought up in this brief conversation.

Q All of this took place, I take it, in a minute?

A No, sir, in a total of three minutes divided in half, is my recollection. I spoke to her briefly before Mr. Tinney, in advising her she didn't have to talk, and briefly afterwards in which this information was secured.

Q And it is your testimony, sir, that during that brief minute and a half that you discussed her back-up time -- correction --

A Correction? Sir, what do you mean?

Q Correct, sir, her back up time.

A I told her, sir, that I knew of her back-up time.

Q I see. And you discussed with her the fact that you were not going to dismiss all the charges?

A Mr. Johnson, I told her that I knew of her back-up time and that I could not dismiss the charges; she would have to plead guilty if she were going to testify as a Government witness, and that if she still wanted to make the statement, well and good, but I could make her no further promises than to advise the Court of her cooperation. I will further state, Mr. Johnson, that I was wanted on several other things on that occasion and was most anxious to complete that brief interview, and that I did as expeditiously as possible.

Q Then it is true, sir, that this defendant had a conversation with you on that morning, sir, about dismissing all of these charges?

THE COURT: Mr. Johnson, I am interested in getting ahead with this

proposed paper that has been identified here as Government's 15.

You are not sticking to that. You are running off on other things. Now, we have had one day and parts of two other days -- that is, today and the day before yesterday, that we have spent going into this.

Now I think that in your questions you should stick to the issue that we have here, which is as to whether or not this statement was made and what he knows about the making of this statement on the 8th of March, and whether it was made on the 15th of March and what he knows about that.

MR. JOHNSON: May it please the Court, I thought that I was doing so.

I thought the testimony of Doris Gardiner was that these Narcotics Agents said that they were going to dismiss all the charges against her. I thought she said that, and I was merely asking him about it.

I think it is perfectly pertinent.

THE COURT: I do not recall Doris Gardiner in any testimony that Mr. Smithson said that he was going to dismiss anything.

MR. JOHNSON: No, if Your Honor please, the question came up about the voluntary character of this statement that was taken. This defendant said she made a statement --

THE COURT: But this man that is here was not present at either of the taking of these statements.

MR. JOHNSON: I don't suggest he was.

THE COURT: You have asked him that anyway.

MR. JOHNSON: If Your Honor please, I don't think I asked him that. I think he volunteered, without my asking him, that in the minute that he said he talked with her, that he discussed several things.

THE COURT: Well, I don't intend to have this inquiry prolonged indefinitely.

MR. JOHNSON: Very well.

THE COURT: And you must stick to the issues that are involved in this hearing before me.

MR. JOHNSON: Is it Your Honor's ruling then that I may ask - -

THE COURT: It is my ruling that many of these questions that you have asked have nothing to do with the subject matter that is here, and I am just telling you that now you must stick to the questions that are involved here.

MR. JOHNSON: Well, I don't want to trespass on Your Honor's ruling.

Is it Your Honor's ruling that I may not ask him about the discussion about dismissing all the charges?

THE COURT: You have asked him about it.

MR. JOHNSON: He has not answered it yet.

THE COURT: Well I thought he had. I remember distinctly that he did say that he would not and could not dismiss the charges.

MR. JOHNSON: Yes, Your Honor. I want to ask him --

THE COURT: You want to ask him something further about that?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Go ahead.

BY MR. JOHNSON:

Q Now with regard to this minute of conversation you had before Mr. Tinney came, this Defendant Gardiner did say something to you about dismissing all of these charges, didn't she?

A No, sir.

Q In other words then, without any predicate, is it your testimony that you told this defendant that you would not dismiss all the charges?

A The question, as you put it, Mr. Johnson, was before Mr. Tinney came.

Q That is right.

A After Mr. Tinney had talked with this particular defendant I advised her to the best of my recollection that I had been informed she had back-up time, and also these charges, and that I thought she ought to know that I could not dismiss these charges against her and had no control over her back-up time.

Q Is it your testimony now, sir, that you did not tell her that when you first saw her?

A That is my recollection that I did not, sir.

Q Was I mistaken, sir, when I asked you a few minutes ago what you told her when you first came in there, that you did tell me, sir, that you discussed dismissing all the charges, you discussed her back-up time -- is that true or not true?

A Sir, that is not true, sir. I told you that there were two conversations divided in two separate times, and I gave you a summary of all of the conversations that I had with the witness before and after Mr. Tinney.

MR. JOHNSON: Your Honor, may I have the stenographer read --

THE COURT: No, you may not.

MR. JOHNSON: Very well.

THE COURT: But he may tell you again.

MR. JOHNSON: Yes, Your Honor.

THE COURT: Tell him again first what you said the first time you talked to her, that is, before Mr. Tinney came, and then what you said after Mr. Tinney came on the same date.

THE WITNESS: It is my recollection that when I spoke to Doris L. Gardiner I told her who I was; I identified myself to her as an Assistant United States Attorney; that I told her that she did not have to make any statements to me, she did not have to answer any questions, and if she did, they could be used against her, and that I wanted her to know this.

I recall asking, or a conversation to this effect; that whether or not she had an attorney or knew one, to which she replied "no" or shook her head, I'm not sure which because she is a very soft-spoken person, she does not talk awfully loud and quite often uses head movements to indicate yes or no. I recall saying to her that I thought she should speak to an attorney, and that if she had none, I would appreciate it if she would talk to Mr. Tinney because he was an attorney not in the United States Attorney's Office obviously, and that I stepped out of the room when Mr. Tinney came, Miss Kehl did also, so that Miss Gardiner might speak to him.

That is my recollection of all that transpired before Mr. Tinney spoke to her.

BY MR. JOHNSON:

Q Had you spoken to Mr. Tinney before you asked this young lady if she knew of him?

A Yes, sir.

Q Now, Mr. Smithson, during that first conversation, sir, did you speak of any rediction in her bond?

A I can't recall whether I did or I did not, Mr. Johnson.

Q As a matter of fact, may I refresh your recollection, sir. Did you or did you not, sir, advise this young lady that if she was cooperative, that you, as Assistant United States Attorney, would secure a reduction in her bond?

A Before she spoke with Mr. Tinney, sir?

Q Yes.

A I have no recollection of saying that, sir.

Q Did you or did you not subsequently to this cooperate and seek to reduce her bond?

A I don't have any recollection of saying that to her at that time, yet I won't say that I may not have. I will say that I could have suggested or recommended to the United States Commissioner a reduction. I have no recollection in this particular case but I have done it in others.

MR. JOHNSON: I have no further questions.

CROSS-EXAMINATION

BY MR. HANTMAN:

1207 Q You told the Court you were aware on March 15th that the defendant Gardiner had some backup time and that she was a three-time loser. When in point of time, if at all, did you discuss these matters with the defendant Gardiner?

A It is my recollection, Mr. Hantman, that I learned of this fact on the morning of the 15th, or the day before, and that these facts were conveyed to me by the agents, who stated that Mrs. Gardiner was concerned over this. I told them, as I later told her, that I could do nothing about her back-up time. That is, that I could do nothing about the fact that she would have to serve it, nor could I dismiss the charges against her. Following her conversation on the 15th of March with Mr. Tinney, we further discussed it, the defendant Doris Gardiner and I discussed it, it is my recollection, in the presence, again, of at least agents Reed, R-E-E-D, and I am not certain about Agent Heneghan because he was on - oh, well, Agent Heneghan, too, I believe, at a later time.

1208 BY MR. JOHNSON:

Q Mr. Smithson, is it correct that you told Doris Gardiner that you could not dismiss all these charges?

A I told her that I could not and would not, Mr. Johnson.

Q That you could not and would not. Is it not true, sir, that you expected her, and the understanding was that she would be a witness for the Government?

A That's right, sir.

Q Is it not true, sir, that Title 23, Section 101, of the Code of the District of Columbia, provides that if you, as a United States Attorney, want to use a defendant as a witness, that you may dismiss the charges against him?

A It puts the discretion to me, sir, and at my discretion I told her I could not and would not. I did not think it appropriate.

Q I see. Do you think that this defendant, when you told her that -- could not means you are unable to, doesn't it?

A In my conscience, I am unable to.

Q I see. And did you tell this young lady, do you think she understood the difference between what you told her, that you told her that you could not, which meant that you were unable to? That was not an exact statement of the law, is it, Mr. Smithson?

A I did not hold any learned dissertation with the defendant on the law, Mr. Johnson.

Q I see. But you were a lawyer, sir, were you not?

MR. HANTMAN: I think counsel is arguing with the witness at this point and I take objection.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q During your conversation with Mr. Tinney, sir, did any question come up as to how he was going to be compensated for these services?

A With Mr. Tinney? To the best of my recollection, Mr. Johnson, I asked Mr. Tinney if he would be willing to serve in this capacity. Whether or not I told him anything about his arrangements with this defendant I am not certain, but I do recall, Mr. Johnson, telling this defendant that she would have to make her own arrangements with Mr. Tinney.

Q Well, I thought you elicited from her, sir, that she had no money to pay a lawyer?

A I asked her if she had any.

Q And she told you that she was unable to pay a lawyer?

A It is the best of my recollection she said she had little or no funds for that purpose.

Q Did you inform Mr. Tinney, when you talked to him, that this was a defendant without funds to pay him for his services?

A I believe I did when I talked to Mr. Tinney on the phone prior to his coming over there, but I would not say, without a question, that I did. It is my recollection that I did, but that is my best recollection.

Q Was there any special, out of the sixteen thousand lawyers in the District of Columbia, why you picked Mr. Tinney?

A Yes, sir.

MR. HANTMAN: I will object to that. I don't think it is germane at all to the issues of this case.

1213 ELINOR KEHL

was called as a witness for the Defense, was sworn, and testified as follows:

1214 Q Directing your attention to that morning do you recall having seen the Defendant Doris L. Gardiner?

A I don't recall the date but I do remember seeing Miss Gardiner.

Q Do you remember the occasion of having seen her that morning?

A Yes, I do.

Q Can you tell Her Honor approximately what time it was you saw her -- approximately?

A Well, she came in with the usual load in the morning about eight o'clock.

1215 Q At whose request did you take her to this place?

A I brought her to the district attorney's office, Mr. Fred Smithson.

Q And when you took her to Mr. Smithson's office was any person present other than Mr. Smithson?

A Yes, there sere several people there.

Q Will you tell Her Honor who they were?

A I can't call them by name because I don't know the names, but there were several narcotic men there.

Q Several who?

A Narcotic men.

THE COURT: Narcotic?

A Narcotic agents.

THE COURT: Yes.

BY MR. JOHNSON:

Q And how many of them were there?

A Maybe two or three. I just can't recall.

Q Did any conversations between Mr. Smithson and the defendant occur when --

A They talked.

Q What is that?

A They talked. They had conversation together.

Q I see. Were you present during the period of this first conversation?

A Yes, I was in the room.

Q How long did the conversation last?

A I couldn't tell you, sir.

Q Approximately?

A Maybe about a half an hour.

Q And who was present at that time?

A Mr. Smithson, two narcotic agents --

Q And the defendant Gardiner?

A Yes, she was there.

Q Did there come a time when a Mr. Tinney came in?

A Yes, there was.

Q Were you present when he came in?

A I was present when he entered the room, yes.

Q At what time during the period -- was it during this half hour of the first conversation or was it after the half hour?

THE COURT: Mr. Johnson, you have referred to the first conversation. She has not said anything about denominating it first, second, or what it was.

BY MR. JOHNSON:

Q Well, the conversation that you have testified?

A Mr. Tinney was there.

Q From the beginning?

A Yes, I think he was. I think he was there from the beginning.

Q He was there all the time? He was there, then, when you brought her in?

A I think he was. I could not say for sure.

Q Well, was there any time during the time that you heard that, that you were there, that you heard Mr. Smithson say to the defendant, "Before you make a statement I want you to have a lawyer?"

A No, I never heard anything like that.

3219 THE COURT: Mr. Johnson, I don't think these questions are going to

be at all helpful to me in trying to decide what I have to decide.

MR. JOHNSON: Very well, Your Honor.

THE COURT: I wish you would get down now to the point.

BY MR. JOHNSON:

Q Can you tell Her Honor how long the defendant Doris L. Gardiner was up out of the cell block before you took her back down to the cell block?

THE COURT: You don't need to answer that question. You are to make inquiry about this statement which is the subject matter of this hearing.

MR. JCHNSON: Yes, Your Honor.

BY MR. JOHNSON:

Q Did you see a statement that Doris L. Gardiner signed?

A No, I never saw the statement.

Q Did there come a time when Doris Gardiner went back down to the cell block that day?

A Yes.

Q Did there come a time down in that cell block when she signed some papers?

A She did sign some papers.

Q Were there several papers?

THE COURT: Let me ask you this.

A Yes, ma'am.

THE COURT: Did you read any of the papers that she signed?

A No, ma'am, I was just a witness that she had signed the papers.

I didn't see any of the papers. I could not tell you the contents of the papers.

THE COURT: So you don't know what was in any paper that she signed, is that correct?

A That is correct.

BY MR. JOHNSON:

Q Do you know how many papers she signed?

A Well, whatever it is, it was a copy. I don't know whether it was one copy or two copies or any more than just the one copy. I could not tell you, sir.

THE COURT: You mean that there was just one paper?

A No, there were several pages.

THE COURT: Several copies of one paper or did you mean --

A There were pages of paper. Now, whether there was more than one copy, Your Honor, I don't know.

BY MR. JOHNSON:

Q In your presence did she place, in addition to signing her signature, did she place her initials at various places on these papers?

A I don't know. I was not in the room.

Q Beg your pardon?

A I could not tell you that. I only witnessed her signature that she had signed the papers.

Q Now, did you witness every paper that she signed?

A I was there when she signed these papers, yes.

Q I mean but did you put your signature on every paper that she signed?

A Yes, I did.

Q You did?

A I would not know. I never examined the paper.

Q That is all.

CROSS EXAMINATION

BY MR. SMITHSON:

Q At the time that you brought Mrs. Gardiner to where I was, was she handcuffed to you, Mrs. Kehl?

A Yes, she was/

Q And did you stay with her when I spoke to her?

A Yes, I did.

Q Now, Mrs. Kehl, when I spoke to her, do you have any recollection of whether or not I advised her if she had to speak with me or make any statement?

A You told her she didn't have to make a statement if she didn't want to, as far as I can remember.

Q Miss Kehl, let me see if I can refresh your recollection.

When you brought this witness upstairs you brought her through the transverse corridor that runs from west to east along the United States Attorney's office. Do you remember that?

A Yes, I do.

Q Do you remember bringing her down to what we call the dug-out, where all the files are?

A Yes, I do.

Q And do you recall taking her into a small corridor, into a small room on the southeast corner here?

A Yes, I do.

Q Have you ever been to my private office or my personal, regularly assigned office?

A Yes, I have.

Q Is it your recollection it was the same office or not?

A The last one we went into was your own personal office, that I can recall.

Q The last one?

A Yes, sir.

Q Did there come a time, Miss Kehl, when you brought this person, Doris Gardiner, to this room, that I asked you if you would step out of the room with me while she spoke to Mr. Tinney?

A She spoke to Mr. Tinney in private and I waited at the door.

MR. SMITHSON: That is all I have, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

(The witness left the stand.)

THE COURT: Is there another witness to come?

MR. JOHNSON: Mr. Tinney.

I think Mr. Tinney is here.

THE COURT: Is Mr. Tinney present?

MR. JOHNSON: I think Mr. Tinney is in the corridor, Your Honor. I don't think he stayed in the room.

Thereupon,

1225 WILLIAM A. TINNEY, JR.

was called as a witness by the Defense, was sworn, and testified as follows:

MR. JOHNSON: If Your Honor please, may Mr. Shorter examine Mr. Tinney?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. SHORTER:

Q Could we have your full name, sir?

A My name is William A. Tinney, Jr.

Q What is your employment, sir?

A I am an attorney at law.

Q Licensed to practice in the District of Columbia, I take it?

A I am.

1226 Q Now, turning your mind back, sir, to the month of February, March and April of this year, did you have an occasion to come into contact or meet one Doris L. Gardiner, who is the defendant in this case?

A I did.

Q Would you tell us, sir, when and where that was?

A I don't recall the specific date, but I met Doris Gardiner here in the courthouse.

Q Could you relate, sir, the circumstances under which you met her?

A Yes, I received a telephone call.

Q From who, sir?

A From Mr. Smithson. And I came here in response to that call. And I saw Doris Gardiner in one of the anterooms off of the United States Attorney's office, in the company of a female Deputy United States Marshal.

Q When you received this telephone call were you told as to what was wanted of you?

AWell, not precisely, no.

Q Were you asked to come to the courthouse?

A Yes.

Q Was the particular venture, or the particular purpose of your visit mentioned to you?

Was anything said to you as to the reason why you were asked to come here?

A Yes, I think it was.

Q Could you tell us what that was?

A I think there was some conversation to the effect that this defendant, Doris Gardiner, was charged or had been arrested, at least, and charged with some narcotic violation.

Q And what is the prupose, if any, that was indicated to you as to why you should come over?

A That she needed the advice of counsel. Or of some attorney.

Q What took place after you received the call?

A I came to the United States Court House and had a converstaion with Doris Gardiner.

Q Now, prior to the time that you had this conversation, did you see Mr. Smithson first?

A I don't know whether I saw him in the company of Doris Gardiner.

As I recall, I saw Mr. Smithson in his office.

Q Before you saw --

A No, in the presence of Doris Gardiner. He was there. I could be in error about that.

Q What I want to know is whether or not you were given any fill-in or briefing about the particular purpose for which you were to be there, out of the presence of Mrs. Gardiner?

A I don't know whether I was or not. I wouldn't like to state categorically whether or not that happened or not.

Q Now, when you first saw Doris Gardiner where was she?

A She was sitting in Mr. Smithson's office, as I recall.

Q In his private office?

A In this -- well, his private office, yes.

Q And who was present at that time?

A The female Deputy United States Marshal and Mr. Smithson, and I. There might have been someone else present, I don't recall.

Q Do you know Mr. Reed? Agent Reed?

A Yes, I know Agent Reed.

Q Was he present?

A He was present or either nearby. I remember seeing him.

Q Do you know Agent Heneghan?

A Not by name.

Q Well, do you recall that there wasssome other person, who is not known to you, who perhaps was identified with the Federal Narcotics Bureau at the time you first met Doris Gardiner?

A I think there was more than one agent there, I think so.

THE COURT: Did you or did you not talk privately to Doris Gardiner?

A Yes, I did.

BY MR. SHORTER:

Q When did this take place?

A On the same day that I came over here.

Q Did this take place in Mr. Smithson's office?

A It did.

1230 Q Well, who was present when you finally talked with Mrs. Gardiner?

A As I recall, Mrs. Gardiner was there with this, again I think it is female, Deputy United States Marshal.

Now, I may be in error in this regard, but my best recollection is that this Marshal, female marshal, stepped immediately outside of the room, but hovered in the immediate vicinity, while I had the conversation at some length with Miss Gardiner.

Q Did it come to your attention, sir, that on this particular day Mrs. Gardiner signed some papers?

A I think she had signed some papers.

Q She had signed some papers?

A I think she had.

Q Before you came or after you were there?

A Well, I couldn't say that. I don't know.

Q Did you and Mrs. Gardiner have any conversation about her signing any papers?

A Yes.

Q Well, now, do you remember that conversation?

A I don't remember it verbatim but I think the gist of it was that --

Q Wait a minute now, without asking you what occurred between you and

Mrs. Gardiner, you say you do remember that some papers were discussed between the two of you?

A Well, when you say papers I will put it this way --

Q Some statements, sir?

A Statements?

Q Yes, sir.

A I can't answer that categorically. My best recollection is that there was some conversation about certain statements which she had already made.

Q How about written statements that she had signed or was about to sign, sir?

A I don't recall anything about any written statements that she had signed or was about to sign, except insofar as these so-called statements would concern any waivers.

Q Let me ask you this. Did Mrs. Gardiner, in your presence, sir, sign any written statements?

A No.

1232 Q Did you have any knowledge that she was about to sign any statement at the time you talked to her?

A Yes, I think I gleaned that, certainly.

Q That she was about to or had signed some?

A Either was about to or had signed some, and that is the reason she needed the advice of an attorney.

Q Were these papers shown to you, sir?

A No, sir.

THE COURT: I will not ask you what she said she said, but did she tell you that she had made a statement?

A My best recollection is, Your Honor, that she indicated that she had made some type of statement, either orally or written, and probably the statement had been given because of the fact that she was not only charged with this present offense but because of the parole situation.

1233 Q Let me ask you this to see if we can pinpoint it more definitely.

Were you advised, sir, as to how long she had been in custody -- could you relate the time of the arrest to the time you saw her? Was it the day after her arrest, the next day, or week after her arrest, if you know, sir?

A You say "advised." No, I was not advised at all.

Q You didn't learn anything about when it was that she had been arrested in relation to the time that you had this first conversation with her?

A Yes, I think I did but I can't recall it now, because I didn't have any occasion to anticipate this development, so I didn't take any particular notice.

Q Mr. Tinney, when you came over at the request of Mr. Smithson, as you have described, and participated in this conference as you have related to us, did you consider, sir, that you were serving as Mrs. Gardiner's attorney?

A At that particular time?

Q Yes, sir?

A Yes.

1235 THE COURT: It seems pretty obvious, Mr. Shorter, that this witness isn't in a position to give any testimony about these statements or the circumstances under which they were made.

1236 BY MR. SHORTER:

Q Well, Mr. Tinney, I am asking you about written statements.

I have a full understanding from you that it was your impression that she had made oral statements at the time you first met her. That is correct, is it not?

A Yes, that is correct.

Q All right. Now, I am asking with particular reference to written statements -- statements that she was to sign or had signed.

Now, was any conversation had in your presence or between you and Mrs. Gardiner, or between you and anyone who was present, or between anyone else who was present, concerning her signing statements?

A Yes. I talked with Mrs. Gardiner and told her that it was my considered advice -- and these are my words as I recall, because I use this language frequently -- that she should make any statement in connection with this case that she felt free to make, whether it involved her or anybody else who were involved in this case. I advised her to do that, and to sign any statements.

Q Well, had it been indicated that there were some statements that she was to sign, or had she already signed them? That is what I am trying to learn from you.

A My best recollection is that Miss Gardiner had made some statements at least to somebody who is connected with this case. It might have been Mr. Smithson, it might have been somebody connected with her parole. I am not too positive about that. But I know the parole question came up, and it is my impression that she had made some statements concerning her

activities after parole. And those activities might very well have encompassed the charges here.

Q The question is, Mr. Tinney, had she signed statements before you saw her, or whether or not the conversation that you all had pertained to statements that she was to sign?

A Number one, I don't know whether she had signed any statements before or not, I don't recall that, to be specific, and I don't want to state that categorically.

Number two, I advised her to sign any statement which involved her participation and the participation of anybody else in this trafficking in which she was involved.

1238 Q The thing I am concerned with and asking you, is whether or not it came to your direct attention that there were some written statements in that room that she had either signed or was about to sign?

A I can't recall. There might have been. I don;t know. There might have been some statements that she was going to be asked to sign.

I don't know whether it had been signed or not.

Q But you know you did not read them?

A No, I didn't read them, I did not.

1240 THE COURT: All right.

Do you want to make any statement?

MR. JOHNSON: Yes, if Your Honor please.

I think that this statement is inadmissable on two grounds: It appears that in corroboration of the defendant's statement some questions came up about the dismissal of these charges, and it also appears that she

signed this statement in order to cooperate with the government, and part of the cooperation was the signing of this statement.

It further appears that this statement was the product, the literary product of narcotics agent Heneghan, which is composed not in collaboration with this defendant but was composed by Heneghan from his own notes and then presented to her as a part of her cooperation, to sign.

In addition to that I think Your Honor has already ruled that with regard to the arrest in this case, that although the fourth within the command had nothing to do with the time of the arrest, and he was supposed to be brought forthwith to the Commissioners after the arrest; that that was not done, and in the Mitchell case I think Judge Bazelon outlines exactly what "forthwith" means in that particular area. So we are not concerned so much with the time of the arrest, but as Your Honor has already ruled, that that forthwith depends on what was to be done after the arrest.

So that it was not obeyed in its terms, and in consequence of its command. As Judge Bazelon says in the Mitchell case, that disobedience of that will invalidate the arrest and would make the statement obtained during an illegal detention.

We have the first situation where they did not intend to take her to a Commissioner, they intended to get a statement from her along with some other duties, but that that was one of their purposes in not taking her to the Commissioner's and in taking her to their office. The testimony is substantially corroborated that she was kept there from four o'clock and continuously except for inconsequential, interrupted intermissions, except kept there until some time around 7:30 or 8 o'clock until some time around 7:30 or 8 o'clock until a complete statement had been obtained, after which

she was kept there until the cooperative statement had been composed, and then she was required to sign that as an evidence of this cooperation.

So we have a situation in which, in my way of thinking, that this is a flagrant, direct, confessed violation of rule 5(a). It is also a direct, confessed, and flagrant violation of the command of the warrant, and which they flagrantly disobeyed the instruction to bring her immediately before the Commissioner. We have shown that the Commissioner was available. We have shown also that they had an opportunity to arrest her during the time when they knew the Commissioner was available; that for purposes of their own, without giving any reason for it, they delayed it at that time and delayed it and delayed it until 4:40, or what the defendant says, around five minutes after four.

So I think under all of the circumstances, the circumstances as to what occurred, the circumstances as to what they told her, the circumstances as to their continual questioning of her, purposeful, continuing during this time, makes this statement inadmissible.

THE COURT: The Court is unable to say as a matter of law that the statement is inadmissible, and the Court feels that this involves questions of fact that the jury should determine.

1299 MR. SHITHSON: That is the Government's case, in chief, Your Honor.

1300 MR. MITCHELL: If it please Your Honor, I arise at this time in light of the statement made by counsel for the Government, and request that the jury be excused in order that we may take up certain matters out of their presence.

THE COURT: How long do you contemplate it will take?

MR. MITCHELL: Maybe a couple of hours.

THE COURT: Well - - -

MR. MITCHELL: I might say to Your Honor this comes rather unexpectedly to us.

THE COURT: I will excuse the jury, then.

1303 MR. SHORTER: I shall discuss each and every one of them individually, Your Honor. It seems that I have been selected and appointed to make this argument on behalf of all of the defendants.

THE COURT: Very well, sir. 134

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THE COURT: All of the defendants, I believe, are present?

MR. MITCHELL: Yes, ma'am.

THE COURT: And all counsel are present.

At the end of the last session some motions were made.

(There was a pause.)

THE COURT: These motions were for the judgments of acquittal. I have concluded not to grant the motions; that is, to deny the motions at this time as to all defendants.

MR. JOHNSON: If Your Honor please, at this time I would like to move Your Honor to suppress the statement, from the record, number two; and number three, if Your Honor wants me to I will give you the reasons for those motions -- the motion to strike the statement and suppress evidence based on three grounds;

One, that there was an unusual delay of this defendant's
1350 arraignment for the purpose of obtaining a statement.

Number two, that the statement was involuntary under the admissions of the various witnesses.

And, number three, that there was a concerted effort to deprive this young lady of her right to counsel and as a result of that arrangement her rights in those instances were violated.

1374 MR. JOHNSON: Agent Broadnax.

Thereupon,

THOMAS E. BROADNAX, JR.

called as a witness by counsel for Defendant Gardiner and, having

been first duly sworn, was examined and testified as follows:

1374
1375 BY MR. JOHNSON:

Q Mr. Broadnax, you have been sworn already, sir.

A That's right.

Q Directing your attention to your previous testimony, sir, you have indicated to this jury that as of January 11, you know of no prior activity in this case; is that right?

A That's right.

Q When is the first time you knew of the activity and how far it went back prior to November -- to January 11?

A Of this case?

Q Of January 11, 1962.

A You mean involving this case?

Q Yes, sir.

1376 BY MR. JOHNSON:

Q Can you tell us what time is the first time did you find out that your compatriots in the Narcotic Bureau had been investigating this case? What time?

MR. MITCHELL; I object to that, too, Your Honor.

MR. JOHNSON: I thought that was specific. It merely requires the answer of a date.

THE COURT: I think it would be better -- you said his compatriots.

MR. JOHNSON: Very well.

THE COURT: I think you better indicate who you are te about.

MR. JOHNSON: All right.

1376 If Your Honor please, I take it I can denominate Mr. Broadnax an adverse witness and I claim the right to cross-examine him.

MR. SMITHSON: I object to any such characterization or any such denomination. He cross-examined this witness when he was called as a Government witness. He has gone into the very thing he is trying to go into now and there is no basis on which he can claim hostility.

MR. JOHNSON: I didn't claim hostility. If Your Honor please, I don't claim he is hostile. I claim he is adverse and I 137
1377 merely claim I have a right to cross-examine an adverse witness.

THE COURT: What do you want to ask him?

MR. JOHNSON: I want to ask him whether there didn't come a time - -

THE COURT: Just put the question to him.

BY MR. JOHNSON:

Q Did there not, sir, come a time after January 11 when you knew full well that in September, when you claim you came here, they were investigating this case?

MR. MITCHELL: Objection.

1378 THE COURT: It doesn't make any dofference when they started investigating this case. What are you trying to show?

MR. JOHNSON: I went to show he has told an untruth.

1379 THE COURT: That he knew of it?

MR. JOHNSON: Yes. I am going to ask him -- I did ask him did there come a time and he answered no, sir, I never did find out they were investigating this case after January 11.

THE COURT: I don't believe he did.

Everybody stop now.

1379 Mr. Reporter, go back and read the testimony of this witness.

(Thereupon, the reporter read as requested.)

THE COURT: No question was put to him in terms of when he knew it had been investigated. When he knew of his personal knowledge. He claims it was as of January 11, 1962. You can ask him questions directed to finding out what you want to know about your client.

MR. JOHNSON: Yes, ma'am.

To show you what is in my mind, he said the only time he knew that these people were interested, from all the information he had in his hands, was January the 11th.

THE COURT: He?

MR. JOHNSON: Yes, he.

I asked him after January 11 if there came a time he knew they were interested before January 11.

MR. SMITHSON: I object to the immateriality and irrelevancy.

1380 MR. JOHNSON: He already testified to it.

Your Honor, here is the thing. I have an affidavit sworn to by him in my possession that says he did.

THE COURT: He did what?

MR. JOHNSON: He knew all of their activities and what they had been investigating. I have an affidavit signed by him.

MR. SMITHSON: Assuming he does, that has nothing to do with entrapment. What is his testimony? What he learns from another witness is hearsay. If he participates in an affidavit, he and others may participate in the scope of that affidavit.

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THE COURT: I think there was a decision very recently that dealt with probable cause or search warrants and it said if information was given to one in the Police Department it was to all of them. But you are asking him, I thought, about his knowledge.

MR. JOHNSON: Yes. When is the first time he personally knew they were doing it.

13.

THE COURT: He can't know the truth of what they say.

MR. JOHNSON: No. I don't assert that.

1382

BY MR. JOHNSON:

Q Now, Mr. Broadnax, give me the date, just the date, the first day after January the 11th, if any day, that you found out that narcotic agents, with whom you had been associated in the Washington office, had been investigating this case before January the 11th?

MR. MITCHELL: The same objection, if Your Honor please.

THE COURT: You want him now to tell you what the others told him?

MR. JOHNSON: No, ma'am; I want him just to tell me the date, whether it was June, July, August, November, or what date it was that he first found out that his associates in the Narcotic Bureau were investigating the case prior to January the 11th.

MR. SMITHSON: I would object, Your Honor, on the ground that it's irrelevant and immaterial.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Now, Mr. Broadnax, give me the date, just the date, the first day after January the 11th, if any date, that you found out that narcotic agents, with whom you had been associated in the Washington office, had been investigating this case before January the 11th?

MR. MITCHELL: The same objection, if Your Honor please.

THE COURT: You want him now to tell you what the others told him?

MR. JCHNSON: No, ma'am, I want him just to tell me the date, whether it eas June, July, August, November, or what date it was that he first found out that his associated in the Narcotic Bureau were investigating the case prior to January the 11th.

MR SMITHSON: I would object, Your Honor, on the ground that it's irrelevant and immaterial.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Tell me, sir -- and do not answer this question until Mr. Snithson has has an opportunity to object -- as a matter of fact, sir, did you not find out prior to the arrest of the defendant Gardiner that they had been investigating this case just about the same time that you you met Joseph Jackson?

A No, sir, I didn't.

Q You never found that out?

A No, sir, I didn't.

Q Did you or did you not, sir, swear, under oath, in an affidavit, in February of 1962, that that investigation had been going

on prior to January the 11th? Yes or No. Did you swear to an affidavit?

A I don't recall that, sir.

Q What do you mean you don't recall?

A I don't --

MR. SMITHSON: Objection to arguing with the witness.

THE COURT: The objection is sustained.

1385 THE COURT: He has told you that his knowledge was of January 11th, 1962, Mr. Johnson.

MR. JOHNSON: Yes ma'am. I want to know when the first time was that he found out that Reed and Heneghan and the others with whom he was associated had been investigating it prior to that time and during the time that he met Joseph Jackson for the first time.

MR. SMITHSON: May it please the Court, I object. It's irrelevant and immaterial. And I must say, Your Honor, that the instrument which is marked Defendants' Exhibit 7 for identification --

MR. JOHNSON: Just a second, if Your Honor Please. I haven't introduced that instrument and I don't think he ought to describe it.

1386 MR. SMITHSON: I am not going to except by number, Mr. Johnson, if you will just pardone me, sir.

I believe that this instrument should be seen by Your Honor before we have further inquiry about this.

THE COURT: Very well.

MR. SMITHSON: May we approach, Your Honor?

THE COURT: Yes.

(AT THE BENCH:)

1387 THE COURT: All he could know was what they told him from that.

MR. JOHNSON: A statement under oath, he wouldn't know about what they said they did? He is party to the same affidavit.

THE COURT: Why don't you ask him if somebody else told him what they did.

MR. JOHNSON: If Your Honor please, they didn't tell him this. They swore to this before the Commissioner. This was a judicial hearing that he participated in.

THE COURT: Let me tell you, Mr. Johnson, this affidavit is signed by a number of agents, and in the affidavit it says the affiant so-and-so says so-and-so.

MR. JOHNSON: That's right.

1388 THE COURT: Then it takes up another affiant, who says something else.

MR. JOHNSON: I agree with Your Honor. I don't suggest to Your Honor that he swears that it was true. I don't suggest that now. But I think - -

THE COURT: I don't see what you are trying to do, Mr. Johnson.

MR. JOHNSON: I see. And you are ruling on it not?

THE COURT: I am not ruling on anything until I hear what your question is.

(IN OPEN COURT:)

BY MR. JOHNSON:

Q Mr. Broadnax, did you or did you not come into the knowledge that the narcotic agents had been investigating this case

1386 MR. SMITHSON: Your Honor, this goes to the matter of the background on Ellen Phelps --

THE COURT: What is it?

MR. SMITHSON: This goes to the background of what is known on Charles Matthews and Ellen Phelps and has to do with the statement of other agents of some time ago. This, Your Honor, is obviously not related to Mr. Johnson's client because it's giving the background for the arrest and as Your Honor can see, it covers what is known by a number of agents.

This is, I think, improper cross-examination because it is no way relates to the testimony against Mr. Johnson's client.

THE COURT: Mr. Johnson, I thought that you were handing this man something that he said.

MR. JOHNSON: No, an instrument that he swore to.

THE COURT: Each one says certain things in here. The date of this thing is not until February the 28th, 1962.

1387 MR. JOHNSON: Yes, ma'am, that's right. I want him to tell this jury that he knew it that day.

THE COURT: That he knew it in February '62?

MR. JOHNSON: Yes, ma'am.

THE COURT: I certainly don't follow what you are trying to do.

MR. JOHNSON: If Your Honor please, this men is testifying now that he knew for the first time January 11th this, and I asked him did there come a time after January 11th when he found out that his fellow narcotic agents had been investigating this case.

1388 in February, and on or about the 27th day of February, 1962?

THE COURT: Now, Mr. Johnson, I am going to sustain the objection to that. You have put the word "knowledge", which means that he must have had knowledge, and he has told you now several times that the first knowledge he had was January the 11th, '62.

BY MR. JOHNSON:

Q Mr. Broadnax, sir, did there come a time when you heard or knew of an oath of your fellow narcotic officers, in an

1389 affidavit that you joined in with them --

MR. SMITHSON: Your Honor, I must rise to object. Obviously, if he participated in some instrument, he would have knowledge of what he did.

What someone else might say would be just as much hearsay if it was said before a Commissiomer or someone else as it would be if it were just a mere conversation.

I must object because we are not going to the issues of this matter, Your Honor.

THE COURT: The objection is sustained.

1389 BY MR. JOHNSON:

Q Now, Mr. Broadnax, directing your attention to the evening of March the 8th, did there come a time, sir, when you were in the Internal Revenue Building in the presence of

1390 Doris Gardiner?

A Yes, there was.

Q Tell us at what time, day or night, that was?

A I am not sure, sir, but I believe it was between the hours of seven and eight p.m.

1390 Q How did you happen to come in there, sir?

A Agent Reed summoned me to come into the room, sir.

1392 BY MR. JOHNSON:

Q Mr. Broadnax, prior to January the 11th how many conferences had you had with Joseph Jackson about Doris L. Gardiner?

A I never had a conference with him about the defendant, sir.

Q Did you have any understanding with Jackson as to

1393 what his function was with Doris L. Gardiner?

A No, sir, I didn't .

Q Did you participate in any conference in which his function was explained?

A I don't understand that, sir.

Q Did you participate in a conference with any person at all, prior to January the 11th, 1962, in which Joseph Jackson's function and what he was going to be paid to do with reference to the defendant, Doris L. Jackson?

A No; no, sir, I didn't.

Q How frequently had you seen Joseph L. Jackson between September the 20th and January the 11th?

A Approximately once a week, once every two weeks.

1396 Q Did you or did any of your associates in the Narcotics Bureau make any effort to determine whether Joseph Jackson was not selling narcotics in the District of Columbia?

MR. SMITHSON: Your Honor -- Go ahead, answer the question.

THE WITNESS: I don't know about the others, sir, but I didn't.

1396

MR. SMITHSON: Now, Your Honor, I rise to object. This is an improper form of examination. It presupposes that there is any truth or validity to it. That is the reason I hesitated to stand up. But I believe we have berated Joseph Jackson both in the cross-examination of this witness in the Government's case and now for some 20-some minutes.

I do believe this is an improper and obviously an extensive attempt to destroy someone who has not yet appeared as a witness.

MR. JOHNSON: If Your Honor please, I suggest he is already destroyed when they confess that he is a paid informer.

MR. SMITHSON: And I think those remarks, obviously again aimed for the jury, Your Honor, are wholly improper.

THE COURT: Many of these questions that you have put to the witness have assumed things that are not in evidence here, Mr. Johnson.

1398 Q I see. Well, then, tell the ladies and gentlemen of the jury why is it that they searched Joseph Jackson on the 11th?

A Sir, he is not an official employee of the Bureau of Narcotics. Therefore, he was searched in order to cover him for going in with me.

Q And it would be your suspicion that he might traffic in narcotics, so in order to insure that he wasn't, you searched him, is that right?

THE COURT: Mr. Johnson, we don't want to go into suspicions here.

1398

MR. JOHNSON: Very well.

BY MR. JOHNSON:

Q Well, what was -- is the only reason that he wasn't searched, to your knowledge, was that he wasn't a member of the Narcotic Bureau?

MR. SMITHSON: I understood counsel to say he wasn't searched?

MR. JOHNSON: That he was searched. I beg your pardon. Thank you, Mr. Smithson.

BY MR. JOHNSON:

Q The only reason that he was searched, that he wasn't an employee of the -- narcotic agent, I beg your pardon, that he wasn't a narcotic agent?

A Sir, would you repeat that?

Q Was the only reason that Joseph Jackson was searched before he went into Upshur Street on January the 11th was that he was not a narcotic agent?

A Sir, no, that wasn't the only reason.

Q What other reasons did you have for searching Joseph Jackson?

A To make sure that there wouldn't be a situation, sir, where he could be, similar to this, where you could claim that he took the narcotics in.

Q I haven't claimed anything, sir.

A Well, sir, that is the reason we search them.

Q Beg pardon?

A That is the reason they are searched.

Q Because of what?

1399 A So we can say that they didn't go in with contraband on them, sir.

Q I see. Well, your testimony to the ladies and gentlemen of the jury is that contraband was already there, wasn't it, when you arrived? It didn't come in with you, did it?

1400 A No, sir, it didn't.

Q It didn't come in with Joseph Jackson, did it?

A No, sir, it didn't.

Q So it was already there, is that right?

A That's right, sir.

Q Well, now, you knew Joseph Jackson had been there be ore, didn't you?

A No, I didn;t, sir.

Q So you thought he was a perfect stranger to Doris Gardiner?

A Most necessarily a perfect stranger, but I didn't know he had been there --

Q You didn't --

THE COURT: Let him finish his answer.

A I didn't know he had been to that house, sir.

Q You didn't know?

A No, I didn't.

Q Did you think he even knew Doris Gardiner?

A Yes, I thought he knew her.

Q He didn't inform you that he knew her?

A Well, sir, he didn't have to if he was going to take me there. I took it that he knew.

1400 Q So you knew he had been there?

A I didn't know that he had been there, sir.

Q You thought he met her on the street?

1401 A It was possible, sir.

Q Now, isn't it a matter of fact, sir, that you knew or had reason to know that you had had surveillance on Doris Gardiner from and after December the 27th, 1961?

A No, I didn't.

Q Then I take it that neither you nor your narcotic agents, associates, had nay information from Jackson about narcotics and Doris Gardiner?

A Sir, I can't answer for them.

THE COURT: Mr. --

Q You don't know about them?

A I don't know about them.

Q If they did, they didn't disclose it to you?

A That's right, sir.

Q You weren't filled in as to what was going -- what Doris was doing or what she was suspected of doing, is that right?

A That's not true, sir.

Q Were you filled in that way?

A I wasn't filled in, but on the way to the house, sir, I was told.

Q You were told by Jackson?

1402 A That's right.

Q And you had reason to believe then that she was selling narcotics?

A No, sir, I had the understanding that she was going to

1402

introduce me to someone else who was selling.

Q I see. That is the only thing you had?

A That's right, sir.

Q And she was merely -- why did you -- weren't you shocked and surprised when Jackson said all of the narcotic transactions will be with you?

A No, I wasn't, sir.

Q I see. You hadn't been briefed on that, had you?

A No, sir, I hadn't been briefed.

Q. Well, you thought that this was just imaginative of your stool pigeon?

A No, sir; most special employees will --

Q Yes?

A Sir, he was going to stay away from the transaction. I would take care of all the transaction.

Q He was going to stay away?

A That's right, sir.

Q Who made the arrangement for him to stay away?

A Well, sir, it is possible that the other agents did.

Q You say it's possible. You don't know?

A Well, in prior activities, sir, he has stayed away.

1403 Q Beg your pardon?

A In prior activities he has stayed away.

Q In other words, that is your habit and custom?

A Not my habit and custom, sir.

Q I mean of your dealings with Jackson?

A Will you repeat that, sir?

Q You have indicated to this jury you saw him once a week between September --

1403 A I said approximately a week or two weeks.

Q You have also indicated, sir, that he was to stay away, and you got that finding or knowledge from prior transactions with Jackson, is that correct?

A That's right, sir.

Q Then it was your habit and practice, in dealing with your stool pigeon, that he would stay away, is that right?

A Sir, when I said stay away, I don't mean stay away from the area. I mean for him not to have anything to do with the immediate transaction.

Q I see. Now, you said that you wanted to insure that he have nothing, then, so that we could come in court and say that this little prize, Joseph Jackson, had something to do with narcotics; is that right? Is that right?

A That's right, sir.

Q Well, now, don't you know, as a matter of fact, sir, that

1404 between January the 10th and all through this investigation that you were conducting, that he used to take her to work in the morning, bring her to work, bring her home in the evening?

A No, I didn't, sir.

Q You were absolutely unconcious of the surveillance of this girl?

A At what period?

Q During that period of time.

A What period of time is that, sir?

Q Mr. Broadnax, we are only talking about between January the 11th on, now.

A Now would you repeat that, sir?

Q Don't you know, as a matter of fact, sir, that Joseph Jackson, this prize that you wanted to keep away from there because he might take narcotics in there or someone might say he did, saw her, taking her to work in the morning, bringing her home in the evening, in the very familiar red 1961 convertible?

A No, I didn't, sir.

Q You didn't know that?

A I didn't know that, sir.

1405 Q And before you entered upon this engagement to go into Doris Gardiner's home did you take any precautions that Jackson may not have taken narcotics before you even got there that day?

A No, sir, I didn't.

Q Why not?

A Well, sir, first of all, it wasn't my investigation and, secondly, I knew nothing of Doris Gardiner until that afternoon.

1409 Q And with regard to that car, he got out of the car and came over to whereyou all were?

A I am not sure whether he got out or whether they got out and went to his car, sir. I am not sure.

Q Well, now, in any event, did they get into his car with him?

1410 A I am not sure which, sir, whether he got into that car or they got into his car.

Q Well, do you know where the search took place, whether it took place in his car or the other car?

A I am not sure which car.

THE COURT: Mr. Johnson, he has told you that he didn't engage in the search.

Q Were you told, sir, where the search took place?

A No, sir, I wasn't told where the search took place.

MR JOHNSON: Will Your Honor indulge me just a minute?

THE COURT: Yes.

(Brief pause.)

BY MR. JOHNSON:

Q Now, Mr. Broadnaz, can you tell Her Honor and the ladies and gentlemen of the jury how Jackson was dressed on March the 8th?

A I am not sure --

MR. SMITHSON: March the 8th?

MR. JOHNSON: I beg your pardon. January the 11th.

THE WITNESS: I am not sure, sir. I don't recall.

BY MR. JOHNSON:

Q Well, was it warm?

A I don't know what kind of night it was, sir.

1411 Q It was March the 8th -- I mean January the 11th. Don't you know what the weather was in January?

A No, sir, I didn't check.

Q You have forgotten that. Didn't he have an overcoat on?

A I am not sure, sir.

Q What did you have on?

A I don't remember that either, sir.

Q Now, is your memory as hazy about this -- how is your memory so good about other things and so poor in these? Is there any reason for that?

A Well, sir, when I am out transacting narcotic business, that is part of my job, is to remember the evidence.

1421 DIRECT EXAMINATION

BY MR. JOHNSON:

Q Now, Mr. Heneghan --

MR. JOHNSON: May I have Government's Exhibit No. 15?

(The exhibit was handed to Mr. Johnson by the Deputy clerk.)

BY MR. JOHNSON:

Q Now, Mr. Heneghan, I am going to show you Government's Exhibit No. 15. Are you familiar with it, sir?

A Yes, I am.

Q And you typed it, didn't you, sir?

A That is correct.

1423 Q Now, how long did it take you to type it?

A Oh, approximately a half hour.

Q Approximately a half hour?

1424 A I would say about that.

Q And you composed it as you typed it?

MR. SMITHSON: I object to that, to his testifying, Your Honor. I object to the choice of words and the form of the question.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Did you compose it or not?

A MR. SMITHSON: I object to the question, again, for the second time, Your Honor.

THE COURT: I sustained the objection.

MR. JOHNSON: Beg your pardon. I didn't understand Your Honor to say that.

BY MR. JOHNSON:

Q Now, did you consult with the defendant about the language in the paper writing you have there?

A Yes, I did.

Q Oh. Did she dictate it to you?

A Verbatim as it appears here?

Q Yes.

A No, sir, she did not.

Q How was it composed? She didn't dictate it. Who composed it?

1425 MR. SMITHSON: Objection to the use of the word "composition" as a word of creation that counsel insidiously is trying to put in this particular matter.

THE COURT: For the third time I will sustain the objection to the question.

MR. JOHNSON: Very well, I won't use the word "compose".

BY MR. JOHNSON:

Q Now, the language in this is the language that you employed, isn't it? It isn't a recitation of what she had said, is it?

A Not completely, no, sir.

Q Now, where it is not complete what she had said, who put it in there?

A Frequently her responses were in direct -- in reply to direct questions.

Q I see, sir.

A To give amplifying details that were later incorporated in this statement.

Q Now, is your testimony, sir, that from your notes and your notes alone, the ones that you took down in writing, that you then drew up this document that we have here; is that right?

A This is a condensation of the notes that I had taken.

1428 Q I see. Now, directing your attention, you said that this

statement approximately took three hours, is that right; the oral statement, is that right?

A The recording is three hours?

Q Yes.

A The recording is three hours.

Q And it's an oral statement, isn't it, for three hours?

A It involves conversation, not necessarily entirely relating to this statement here.

Q Did it relate to narcotics at all?

A It did.

1431 MR. JOHNSON: If Your Honor please, I think we made a request for recordings earlier in this case.

MR. SMITHSON: Not for this one, you didn't, sir.

MR. JOHNSON: Well, we asked for all recordings.

MR. SMITHSON: I won't produce at all times all recordings. If you want this --

MR. JOHNSON: Didn't we ask for all recordings?

MR. MITCHELL: I thought we did.

MR. SMITHSON: Your Honor, the Government will produce this recording. The Government will suggest that the Court listen to this recording in camera.

This recording takes approximately two hours and 52 minutes. The first admission on the part of the defendant that Charles Matthews is her source of information occurs in the period of 14 minutes and 35 seconds. I timed it.

JOHN E. THOMPSON

1468 having been called as a witness by the defense, took the stand, was reminded he was still under oath, was examined and testified as follows:

1469 DIRECT EXAMINATION

BY MR. JOHNSON:

Q Directing your attention to March 8, sir, did there come a time when you came to duty that evening or in the afternoon at the Internal Revenue Building?

A Yes, sir.

Q What time, sir?

A Well, I was in and out during the afternoon. I got back in at about 5:00 o'clock.

1470 Q Well now had you been there by prearrangement?

A Yes, sir, the other agents new that I was going to be there, yes, sir.

Q Now when had you last been in touch with the narcotic officers before 5:00 o'clock?

A I had been in radio communication with them up until 4:30 and past 4:30.

Q All right. What is that? Would you say that would be the last time before 5:00 o'clock as you recall?

A The last time, as near as I can recall, I had contact with them was probably between 4:30 and 5:00, and 4:40.

Q I see. And where were you at that time, sir?

A On Upshur Street, Northwest.

1471 Q I see, sir. Now did there come a time when you started your tape recorder to working?

A Yes, sir, there did.

Q When was that?

A Approximately 5:05 P. M.

Q Well, now how did you come to start it at that time?

A Because I heard conversation from another office at that time.

Q Were you piped into that office?

A Yes, sir, I was.

Q I see. And --

THE COURT: You say you heard conversation from another office?

THE WITNESS: Yes, Your Honor.

Q And had you -- when had you piped it in?

A Just immediately preceding that, about 5:00 o'clock.

Q I see. Now tell us what you had to do to set it up?

A I had to place a transmitter in Agent Heneghan's desk drawer.

Q Yes.

A I had to plug in a recorder in another room, and turn the

1472 switch on a receiver to receive the transmitter.

Q And did you recognize any voices that you heard that caused you to know some people in the room?

A Yes, sir, I did.

Q Whose voices did you recognize?

A I recognized Agent Heneghan; Agent Reed; and Agent Jones. Those are the ones that I recognized.

1476 Q Well now you mean you turned off -- you do not know what other conversation occurred between Doris G rdiner and these agents?

A I only know what I heard.

Q Well how could you tell when they had finished?

A I could tell I knew that Agent Heneghan had left the room to type up something.

Q Well, how did you know that?

A Because I could hear them talking about his leaving.

Q You could hear them talking about it?

A Yes, sir.

1478 Q Mr. Reed, weren't you listening to this all the time?

1479 I mean Mr. Thompson, weren't you listening to this all the time?

MR. SMITHSON: Argumentative, Your Honor.

MR. JOHNSON: All right, I wanted to find out if he wasn't listening at any time.

A There may have been brief occasions when other agents came there to speak to me or some other such thing, as that, when I took the headset off and did not listen.

Q Did that occur in the first thirty-five minutes?

A No, sir, I don't believe it did.

Q Then you know when Agent Broadnax came in there, don't you?

MR. SMITHSON: That is assuming a fact that he came in during the first thirty-five minutes, Your Honor, and it is not shown, and I object.

THE COURT: The objection is sustained.

Q Do you or do you not know when Agent Broadnax came in.

A I can't say the exact time, but I don't recall him coming in during the first thirty-five minutes.

1480 Q Now during the first thirty-five minutes, you say you didn't hear Mr. Broadnax's voice? Did you hear anything about Doris Gardiner's parole?

MR. SMITHSON: I am going to object to going into the conversation, Your Honor.

THE COURT: The objection is sustained.

MR. JOHNSON: If Your Honor please, I would like to tender the witness. He is evidently an experienced man with a tape recorder, and he is the man who prepared that tape.

THE COURT: What is your question?

MR. JOHNSON: I want to know if he did not hear the following things in the first thirty-five minutes.

THE COURT: You wanted this witness called so you could ascertain something about the time.

MR. JOHNSON: Your Honor please, the time of this record is very significant with reference to this defendant Gardiner.

THE COURT: That is what this witness is here for.

MR. JOHNSON: Yes, Your Honor.

THE COURT: And that is what you said you wanted to ask him about the time. But he started something now and you want to go into whatever he heard.

1481

MR. JOHNSON: With reference to its time alone.

THE COURT: With reference to what?

MR. JOHNSON: The time element alone.

THE COURT: Do you mean that you want to ask him what time that some particular thing was said?

MR. JOHNSON: With reference as to whether he didn't hear it before Mr. Broadnax came in. He has approximately estimated when he didn't come in.

THE COURT: Put your question and then I will see.

Q And didn't you hear, sir, within the first thirty-five minutes Agents Heneghan say, we are in your corner. Didn't you, sir?

A The exact words, I cannot recall.

Q I know you can't recall the exact words. Didn't you hear that in substance?

MR. SMITHSON: Object to counsel testifying, Your Honor.

MR. JOHNSON: I am not testifying, Your Honor.

MR. SMITHSON: You are assuming a fact that I had not heard, sir.

THE COURT: I will have the question read. (Reporter read the question.)

The objection is sustained.

Q Didn't you hear something about parole or revoked, those words used?

1482 MR. SMITHSON: Again Your Honor, we are going into the conversation.

MR. JOHNSON: Within that thirty-five minutes?

MR. SMITHSON: We are here to determine the beginning of this particular recording.

THE COURT: The objection is sustained.

Q Now within that thirty-five minutes did you not hear the United States Attorney, those words, or similar words used?

THE COURT: Mr. Johnson, you are going over it again about these particular things. He was called here only to testify about them. Now you are undertaking to ask him about this and that, and the other thing.

MR. JOHNSON: With reference to time element.

THE COURT: No, it is not with reference to time. You are asking did he hear this, that, and the other thing said.

MR. JOHNSON: If Your Honor wants to rule now, I am going to abide by Your Honor's ruling. I am not going to disagree with Your

Honor but it is deferential.

If Your Honor please, I intend to show, I imagine I better do this, I intend to show by this witness that during those first thirty-five minutes before Mr. Broadnax came in, the following language was used. The words, we are in your corner; parole revoked; minimum; what
1483 can I do? United States Attorney. How long; I can help you an awful lot; cooperate; cooperation; help us. Question, cooperate or not? Like what? Tell us. T lk. Bluff your way through. Ten to forty. I know all about that. Ten to forty years again. Ten to forty years again. Going along. Something that can be of help to you. The U. S. Attorney himself. Cut off five years. I don't know about that. Let us put it this way, if you want to help us. Need your help. You have a bad problem. Cut you off. Going to jail. Long, long, long. And so forth.

MR. SMITHSON: Now Your Honor I object to this. I think that question is wholly inappropriate. Your Honor heard this particular recording. It was set up and played.

I submit to the Court that there was no such statement of clarity attributable to any voice, either that of the agent or the defendant, that was not completely garbled, that it was maybe a word such as that, or a word such as arrest might be made. But who was speaking or anything else as to make any sense out of it, I submit it was not shown.

I submit that it is improper to assume that that was heard by those who were assembled. I will further submit to the Court that phraseology one, U. S. Attorney himself, was never heard by this listener, or any remarks such as attributable to cutting five years or any such thing, whatever Mr. Johnson read. I think it is inappropriate, Your Honor.

MR. JOHNSON: If YOur Honor overrules my motion, I wonder if Your Honor will defer it until this: I want Your Honor to make
1484 available to me this tape, since it is not the original; it is merely a copy made for the purposes of this hearing. I am going to see if I can, under the proper supervision, get somebody to filter it, and get the noise out of it, and see if I can't determine what was said.

MR. SMITHSON: This has been a filtered tape. If you cannot get it out with one filter, you can't again. That is the reason I submitted it, I tried to clear it up. I think it is inappropriate and I object to the transmittal of any such tape.

THE COURT: I certainly did not get out of this transcription what you think you got. I thought it was unintelligible for the most part. Now we will go on with this.

MR. JOHNSON: I have no further questions of Mr. Thompson except those that I suggested.

THE COURT: You may step down. (Whereupon the witness left the stand.)

1489 Q Now had there come a time on March 8th, prior to 4:40 P. M. that your department had concluded they would arrest the Defendant, Doris L. Gardiner?

A Yes, there was.

Q Now what time was that?

1490 A My best recolection it was earlier in the afternoon.

1496 Q And you want -- did you search the premises?

A No, I did not.

Q Why not?

A I saw no reason for it.

THE COURT: Just a minute. Why? There is no occasion to ask

him why.

1499 MR. SMITHSON: And this is wholly inappropriate before a jury to raise any issue of Mallory. Mallory is a question solely and strictly for the Court.

THE COURT: What are you planning to do?

MR. JOHNSON: I am planning to show that he obtained a warrant which commanded him by virtue of his judicial office, or officer of the District, to take this defendant directly to the United States Marshal.

1500 THE COURT: I think that is a question of law and I am going to sustain this objection. I am not going into this.

MR. JOHNSON: I am not asking whether it was legal for him to do anything one way or the other. I want to know whether he read that warrant first.

THE COURT: You might just as well be talking from the middle of the floor, Mr. Johnson.

MR. JOHNSON: In other words, if I am not going to be permitted to show the entire statement.

THE COURT: Your are not going into that now. We might just as well understand fully that you are not going into this business about Mallory, about so and about whether this warrant should have been served forthwith. You are intending to ask him about this statement and the circumstances surrounding the statement. That is the purpose of this inquiry and the objection is sustained. Do not go into this any more.

BY MR. JOHNSON:

Q Now Mr. Heneghan, for what purpose did you take the defendant to the narcotic bureau?

MR. SMITHSON: Objection, Your Honor.

THE COURT: The objection is sustained.

MR. JOHNSON: Sustained?

THE COURT: Yes.

1501 Q MR. SMITHSON: Your Honor, I hesitate to challenge counsel's right to interrogate a witness, but I object, and I submit to the Court that this was deliberately provoked before Your Honor in an attempt to raise an issue that this counsel well knew was improper before a jury and for the purpose of speculation.

I have known Mr. Johnson for many years, and I know Mr. Johnson is quite well acquainted with the rules of evidence and what is proper, and I submit this is entirely improper.

THE COURT: The objection is sustained to the question. You may make full inquiry as to what went on there after the Defendant Gardiner was taken there.

Q Mr. Henegan, at any time after the arrest of this defendant, did you attempt to obtain a statement from her?

A That is correct.

Q When dud you attempt first start?

A During the course of processing her at the bureau of narcotics office.

Q At the bureau of narcotics office? Is that correct, sir?

1502 A That is correct.

Q That is the first attempt? Is that right, sir?

A That would be the first attempt to obtain a statement from her, yes, sir.

Q Now didn't you testify here before that you questioned her in the car?

A That is correct.

Q Why weren't you accompanying them to take a statement from her?

MR. SMITHSON: Argumentative, Your Honor.

THE COURT: The objection is sustained.

Q Did you or did you not obtain a statement from her on the way to the narcotic office?

A Enroute to the narcotic office a discussion was had with the defendant regarding the identity of the undercover agent who made purchases from her.

Q I see. Now Mr. Henegan, I believe I asked you --

MR. JOHNSON: Now Your Honor will you have the stenographer read the question and direct Mr. Hereghan to answer it specifically, the specific question.

MR. SMITHSON: I submit the answer was specific to the question, Your Honor.

MR. JOHNSON: All right, sir.

Q Didn't I ask you a minute ago, sir, if you didn't obtain a statement from this defendant on your way to the narcotic bureau? Didn't I ask you that, sir? Isn't that right?

1503 Q Now tell me this, sir. When you got her to the narcotic bureau, did you renew your attempts to get a statement from her?

A There were several questions directed to her with respect to which we anticipated statements. If you will tell me what type of statement you are referring to, perhaps I can pinpoint the time that the questions were asked.

Q What kind of a statement were you trying to get?

A Several statements, personal history data.

1503 Q I see.

A A statement regarding her source of heroin supply.

MR. JOHNSON: Now just a second, sir. May I have the blotter statement, Your Honor?

MR. SMITHSON: Defendant's 5 for identification. I

1504 have that Your Honor.

THE COURT: See if that is what you want.

Q I want to show you Defendant's No. 5 for Identification. Is that the processing you are talking about or part of it?

A That is part of it.

Q That is the questioning. Those are only the questions you asked.

MR. SMITHSON: I object to counsel testifying, Your Honor. He is not asking any questions. It is obvious he is testifying.

THE COURT: Mr. Johnson, what you say to the witness should be in the form of a question; not you telling him something, but it should be in the form of an inquiry.

Q Is it not a fact, sir, that that is the paper that you are talking about, in which you had asked her questions?

Is that right?

A This and others.

Q You had other papers to fill out beside that one?

A That is correct.

Q What other papers, sir?

A There is a fingerprint card.

Q Do you have to ask her questions to put on a fingerprint card?

A That is correct.

Q I see, sir. And did you or did you not already have her fingerprint there? Isn't that true?

1505 A I don't recall whether her fingerprints were on file or not.

Q You didn't know that they were already there?

A I did not know that they were or not.

Q And did or did you not already have most of the information that you have on this paper at your bureau?

A It may have been available. I don't know.

Q Didn't you know, sir?

A I didn't care whether it was available there or not.

Q You just asked questions over again? Is that right?

A That is correct. I am responsible for the information.

Q So you really.

MR. JOHNSON: Excuse me just a moment, if Your Honor, please.

Q Now you say you asked her these questions?

A I may have asked her some of them; Agent Reed, and the others.

Q I am talking about this paper?

A I probably have asked her some of the questions that appear on these; some of the information that appears on there.

Q What do you mean you probably?

A I don't specifically recall asking her each and every question on that sheet.

1506 Q As a matter of fact you know that this wasn't your job this evening? Isn't that right?

MR. SMITHSON: I again object, Your Honor, Counsel 170
is testifying.

MR. JOHNSON: I am not testifying, Your Honor. I ask him if he didn't know it wasn't his job.

THE COURT: It isn't going to help us in this inquiry to find out whether it was his job or not, Mr. Johnson. We must get on with this case.

Q As a matter of fact, Mr. Heneghan, tell her Honor and the ladies and gentlemen of the jury, whether or not you and Mr. Reed hadn't agreed that Mr. Reed should make out this paper?

Isn't that true?

A Mr. Reed was the first to begin to executing that information.

Q Specifically, sir, tell Her Honor, and these ladies and gentlemen of the jury, whether you and Mr. Reed didn't agree, that is between the two of you, that Mr, Reed wuuld undertake to make out this paper?

A There probably was an agreement, yes, sir.

Q Is is true or not, sir?

A I don't specifically recall a verbal conversation as to whom would assume what assignments.

Q As a matter of fact, didn't Mr. Reed undertake to fill out this paper, sir?

1507 A He probably did.

Q Now as a matter of fact in the same understanding and agreement, didn't you understand that you were to question the defendant?

A No, sir.

Q That wasn't the understanding?

A The question as you put it to me is not correct.

Q I see. Well now was that what actually happened?'

A This was a joint situation between Mr. Reed and myself. Certain assignments made may have applied or perhaps one would start the assignments and would proceed with it. We had made numerous arrests before and it was a pattern we get into.

Q You are very experienced in this? Is that right, sir?

MR. SMITHSON: I object to that. It is improper, Your Honor.

THE COURT: The objection is sustained.

At this time the jury may have a recess of five minutes, so remember the usual admonition.

(The Court recessed at 3:15 for five minutes.)

1508 (AFTER THE RECESS:)

THE COURT: Bring the jury in, please.

MR. JOHNSON: How long is Your Honor going to sit?

THE COURT: I don't know. I am going to begin sitting much longer if this case doesn't start making more progress.

MR. JOHNSON: That's all right with me, if Your Honor please. I would just like to know. I would like to make arrangements for witnesses if Your Honor is going to do that.

THE COURT: I think today probably at 3:45 we will recess.

MR. JOHNSON: Yes, ma'am.

(Thereupon, the jury was returned to the court room and seated in the jury box.)

(Mr. Andrew Heneghan, the witness who was on the stand prior to the recess, resumed the stand the the following proceedings were had:)

1508 BY MR. JOHNSON:

Q Now, Mr. Heneghan, directing your attention to the time you got down into the Narcotic's Office with Doris L. Gardiner, you started to question here, did you not, sir?

A That is correct.

1509 Q Now, did anyone else beside you question her?

A Agent Reed also questioned her and I believe that is all.

Q Well, now, wasn't Agent Jones in there for the first part?

A My recollection is that Agent Jones may have come in and out of the room during the course of the interrogation. I don't specifically recall him seeking any questions.

Q How long did you keep her in this room altogether?

A She was in that room about over two and one-half hours.

Q I know, but how long? I know it's over two and a half hours.

MR. SMITHSON: Counsel is testifying. He asked the witness and the witness has answered the question.

THE COURT: What Mr. Johnson said will be stricken. Your question must be in the form of a question and not in the form of a statement.

BY MR. JOHNSON:

Q How long was she in that room, sir?

A I would say under three hours.

BY MR. JOHNSON:

Q Now, Mr. Heneghan, answer me this, sir: As a matter of fact didn't you continuously, you, yourself, in conjunction with Mr. Reed, continuously question this girl for two hours and fifty-two minutes without interruption?

A We talked to her about that long, yes, sir.

Q Now, in addition to this two hours and fifty-two minutes without interruption, didn't that questioning continue --

THE COURT: Just a moment, Mr. Johnson. He didn't say anything about without interruption. You are saying that.

MR. JOHNSON: He said yes.

THE COURT: Well, the record will show.

MR. JOHNSON: Yes, ma'am.

1513

(Thereupon, the reporter read the question as follows:)

"Question: During this period of time, sir, did you talk to her about cooperating with you? Yes or no?

1514

THE WITNESS: I did.

BY MR. JOHNSON:

Q How many times?

A When we first arrived there we discussed her cooperation. I recall that. To the best of my recollection that would be the extent of it.

1514

Q Didn't you tell her if she didn't cooperate with you and didn't tell you the truth you were going to stop?

A Stop what?

Q The questioning.

A I recall asking her this question. We were interested in learning her source of heroin supply. We knew certain information concerning her source. If, at any time during her conversation it would appear she was lying to us we were going to stop and ask her no further questions.

Q What would be the advantage of her not lying to you.

A What would be the advantage of her not lying to us?

Q Yes, sir.

A We did solicit her cooperation.

Q I see. Did you offer her something?

A We stated that we would bring these facts to the attention of the United States Attorney's office.

Q You would do what?

A We would bring the fact of her cooperation to the attention of the United States Attorney's Office.

Q Wasn't her parole time mentioned?

A Yes, it was.

Q And didn't you say you were going to bring to the attention -- her cooperation to the attention of the parole authorities?

A That is correct.

Q And didn't you tell her you would help her?

A Help her?

1515

Q Yes, sir.

A I don't understand what you mean by that.

Q Y^Ou don't know what I mean by help?

A No.

Q I see. Is it your testimony you didn't tell her that?

A What you jus mentioned I wouldn't consider help.

Q No, I didn't ask you what you consider, sir.

THE COURT: What is your question, specifically?

BY MR. JOHNSON:

Q I am asking: Did you tell her that?

A Unless you tell me in what respect this help was, i don't understand. I don't know what you are talking about.

Q Did you tell her that you would help her, sir?

A Help her? I still dnn't understand in what respect you mean help.

1516

Q If you don't understand, that is sstisfactory.

Now, tell me, sir: Dis you tell her that she had ten to forty years?

A My recollection is I advised her of the charges against her and the penalty connected with these charges.

Q Specifically, sir.

A And my recollection is I did inform her of the the term that would face her under these charges.

Q Tell me, sir, specifically: Did you mention to her ten to forty years in prison?

A Yes, I believe I did.

1516

Q But you did ask her to cooperate with you?

A Oh, yes.

Q More than once?

A She was asked to cooperate when we first began interviewing her.

Q That was the first. You continued to ask her; is that correct, sir?

A May have. I don't know.

Q Agent Reed also asked her; isn't that correct, sir, in your presence? Isn't that correct, sir?

1517 A Yes, he was present.

Q So, during the course of the time that you had this young lady in a government building in the winter time -- it was dark, wasn't it, when you got there?

A I believe it was.

Q So you had a young lady in a government building after office hours, after dark, telling her about the amount of time she was going to get; is that right, if she didn't cooperate; is that right, sir?

MR. SMITHSON: Your Honor, I don't believe the evidence has closed, and I don't believe that the facts have been turned over to counsel for argument. I respectfully submit this is a closing argument and not a question.

THE COURT: You may rephrase your question, Mr. Johnson.

BY MR. JOHNSON:

Q Isn't it true, sir, that you had Doris Gardiner is a government building --

THE COURT: Just a moment.

1517

You tell them exactly who was in the building or in your area and what time of day it was.

THE WITNESS: It was in the early evening. Quite possibly if it were not dark when we arrived there it was dark shortly thereafter. There were other agents present in the office. Agent Reed and myself were interviewing the defendant Gardiner.

1518 I don't specifically recall it but usually during these hours cleaning personnel are about the building. However, they will not enter an office if it is occupied. And furthermore this is normal procedure for our work.

BY MR. JOHNSON:

Q This is normal procedure?

A That's right.

Q You mean, it is a paractice of the Narcotic's Bureau to take young women at the night time to your office, interview them yourself, by yourselves, and keep them there until late at night? That's a normal practice?

A That's --

THE COURT: You don;t need tp answer the question.

(There was a pause)

1523 Q Where are those notes?

A They were destroyed after that was prepared.

1527 Q What time did ycu confrcnt her with Agent Broadnax?

A My recollection is that was somewhere between 7:30 and 8:00 o'clock.

Q And what was the purpose of confronting her with Broadnax after the completed her statement?

A There was no particular reason.

Q You did thos for nothing?

A My recollection is Agent Broadnax walked in the room.

Q I didn't ask you what he did, sir. I asked you whether you didn't confront her with him. That is my specific question.

MR. SMITHSON: I object to the question, Your Honor. He can;t stop the agent from walking in.

BY MR. JOHNSON:

Q Now, did you specifically, with reference to what the word confronts means, did you or did you not confront her with Agent Broadnax?

1528

MR. SMITHSON: Objection to the question, Your Honor.

THE COURT: What is the ground for your objection?

MR. SMITHSON: The objection, Your Honor: It presupposes there was a deliberate act on the part of the witness to confront the defendant with Agent Broadnax. The word confront is what I object to. Whether or not they had met I would have no objection.

THE COURT: The objection is sustained to the question as put. You may restate your question.

BY MR. JOHNSON:

Q Heretofore, sir, at page 1110 of this record, on the transcript of September 26, 1962, sir --

THE COURT: What is the witness whose testimony you are referring to?

MR. JOHNSON: Agent Heneghan.

THE COURT: Very well.

1528 BY MR. JOHNSON:

Q Tht page. I asked you this question, sir:

"Did you confront her with Agent Broadnax?

"Answer: It was after Agent Broadnax had returned to the office from his meal. I would estimate the time to be about 7:30 or 7:45, somewhere along there."

Is that correct, sir?

A That was my statement.

Q You did confront her, then, didn't you?

1529 MR. SMITHSON: I object to the argument on words, Your Honor.

MR. JOHNSON: Well, it's in the record.

MR. SMITHSON: I don't care what's in the record. I object to the argument on words.

We will never get through this thing at this rate.

MR. JOHNSON: Your Honor, --

THE COURT: Just a moment. Let me see the record, please, Mr. Johnson.

MR. JOHNSON: Yes, ma'am.

(Mr. Johnson, handed the transcript up to the Court.)

MR. MITCHELL: I object to these speeches made by Mr. Smithson, and I object to this display by Mr. Smithson.

THE COURT: The word was used in your question.

You may have your book back.

(The transcript was returned to Mr. Johnson.)

BY MR. JOHNSON:

Q Mr. Heneghan, this paper was part of the cooperation of Doris Gardiner, wasn't it?

1545 OFFICIAL TRANSCRIPT
October 3 1963

ANDREW J. HENEGAN

resumed the stand and testified further as follows:

MR. JOHNSON: I think there is a witness in the room, if Your Honor please.

THE COURT: Will you make a statement to the witnesses.

THE CLERK: All witnesses in the case of United States v. Charles Matthews, et al will please retire to the witness room.

THE MARSHAL: All witnesses step this way.

THE COURT: Are you ready to proceed, Mr. Johnson?

MR. JOHNSON: Yes, ma'am.

BY MR. JOHNSON:

Q Mr. Heneghan, directing your attention, sir, to the date of January the 11th, on that occasion, sir, did you form a part of a surveillance group that went with Mr. Broadnax and Joseph Jackson to Upshur Street?

1546 A That is correct.

1548 THE WITNESS: My recollection is my first meeting with Joseph Jackson was in the vicinity of his residence.

BY MR. JOHNSON:

Q How did you happen to meet him at the vicinity of his residence?

A Agent Reed, as I recall, had arranged for us to drop by his house and speak to him on this occasion.

Q I see. Prior to that time, was he, to your knowledge, sir, a special employee of the Narcotics Bureau?

A Not to my knowledge, no.

Q Now, was it not, sir, the purpose of your visit to secure him as a special employe?

A That is correct.

Q And will you tell Her Honor and the ladies and gentlemen of the jury what made you think that he might become a special employe of the United States Government in the Narcotic Bureau?

MR. SMITHSON: Your Honor, I don't think this is
1549 material. I think we are going into matters wholly extraneous to this case.

MR. JOHNSON: If Your Honor please --

THE COURT: The objection is sustained to this.

Q Now, is it true, sir, that you knew at that time that he had been arrested by the Secret Service of the United States for counterfeiting? Is that not true, sir?

A That is not true.

Q Did you have any information, sir, that he was charged or about to be charged for counterfeiting of twenty-dollar bills in the District of Columbia, either issuing or passing?

1550 A I did not know that there was any case pending against him nor that one was intended.

Q Did you have an occasion, sir, to talk to a Secret Service Agent, or have any information, sir, that a Secret Service Agent by the name of Ellis, in the Treasury Department, had him in his custody or in the custody of the Secret Service in connection with counterfeiting?

A No, I did not.

Q Will you tell us, sir, how did you happen to pick Joseph Jackson, out of hundreds of thousands of people in the District of Columbia --

MR. SMITHSON: I think this is wholly objectionable, Your Honor.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Is is not true, sir, that you picked Joseph Jackson because there was -- you had been informed that he had been in trouble about counterfeiting?

A I don't understand the way you mean the word,

1551 "trouble". I could explain what I learned about that particular incident.

Q What did you learn about that?

A I learned that he had been interviewed by the United States Secret Service.

Q About what, sir?

A About possession of a twenty-dollar bill.

1551 Q What kind of twenty-dollar bill?

A Counterfeit.

Q Counterfeit twenty dollars, isn't that right, sir?

A That is right.

Q Counterfeit twenty dollars, isn't that right, sir?

A That is right.

Q Now tell me, sir, did you offer him any consideration with reference to the twenty-dollar counterfeit bills he has been questioned about in order that you might induce him to become a stool pigeon?

MR. SMITHSON: Objection. Obviously, when counsel testifies to bills -- as I understand, the witness said this person Jackson had had a bill in his person and was interrogated about the bill.

I think the form of the question, the testimony and the obvious misquotation is objectionable.

THE COURT: Read the question, please.

(Whereupon the pending question was read by the reporter.)

THE COURT: The objection is overruled.

BY MR. JOHNSON: Isn't that right?

A What was the description of the end of it?

THE COURT: Do you want her to read the question again?

THE WITNESS: I am afraid I don't know what the word

"stool pigeon" means.

BY MR. JOHNSON:

Q I see, sir. Well, a stool pigeon, sir, is a fink. You know what a fink is?

A No, I don't.

MR. SMITHSON: Again objection to counsel testifying.

THE COURT: Objection is sustained. You are not testifying, Mr. Johnson. Your only purpose is to ask questions of the witness.

BY MR. JOHNSON:

Q A stool pigeon --

THE COURT: Just a minute.

MR. JOHNSON; I beg your pardon. I won't tell him what it means.

BY MR. JOHNSON:

Q Did you do that for him to become a snitcher?

1553 A By "snitcher" you mean liar?

THE COURT: Mr. Johnson --

BY MR. JOHNSON:

Q There is --

THE COURT: Mr. Johnson, you are going to have to use words in the English language that are understood. I haven't the faintest idea what you mean by "snitcher".

BY MR. JOHNSON:

Q Let me see. Did you do that to induce him to become a double-dealer?

A That is not clear to me either.

Q That is not clear. Did you engage him to become a deceitful person and lie to people about his identity?

MR. SMITHSON: I object, Your Honor, because counsel is again testifying.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Did you want him to be a narcotic agent?

A I did not.

Q Did you know whether, sir, he had been associated with narcotic dealers?

A I had no proof that he was.

Q Sir?

A I had no proof he was involved in narcotics.

1554 Q I didn't ask for proof, sir.

MR. JOHNSON: Would the stenographer read my question.

THE COURT: You asked, did he know.

Read the question.

You are not to answer it, Mr. Heneghan, until I have ruled.

(Whereupon the pending question was read by the reporter.)

MR. JOHNSON: I beg your pardon. I will withdraw the question, Your Honor.

BY NR. JOHNSON:

1554

Q Did you have information, sir, that he had been associated with narcotic dealers or pushers?

A Yes I did.

1556 BY MR. JOHNSON:

Q Did you not know, sir, that he was an inmate of Lorton for robbery immediately prior to the time that you met him?

MR. SMITHSON: The witness is not Joseph Jackson, YOur Honor. The question is whether or not Joseph Jackson at any time was ever an informer.

The Government has adduced evidence on the 11th of January, this officer or Agent Broadnax was introduced as the brother of JOseph Jackson for purposes of narcotic transactions, but this witness is not Joseph Jackson.

I object to this long, drawn out, laborious manner of attempting to impeach a witness who is not on the stand.

MR. JOHNSON: I am not impeaching Mr. Heneghan.

THE COURT: You can't impeach Mr. Heneghan by bringing out something about somebody else.

MR. JOHNSON: I agree with Your Honor.

THE COURT: I think that you have gone rather far afield, considering the fact that Jackson hasn't been a witness at all.

MR. JOHNSON: I agree with Your Honor that we are a little far. I suggest to Your Honor that it is a little unusual situation.

BY MR. JOHNSON:

Q Mr. Heneghan --

MR. JOHNSON: Did Your Honor say I cannot ask him

1557 about his knowledge of his prison record?

THE COURT: I will sustain the objection to this question.

BY MR. JOHNSON:

Q Could you tell us, sir, with a little more definition, as to whether it wasn't substantially prior to September 20 that you employed him as a narcotic employe, I guess.

A I don't know what period you mean by "substantially."

Q I see. Well, can you tell me, sir, when he got the 1961 convertible Chevrolet?

A No, sir, I cannot.

1558 Q When did he get it?

A I cannot tell you when he got it.

Q Oh, I beg your pardon. I didn't understand you, sir.

Did he have it at the time you employed him?

A At the time of our first meeting, I believe he was -- he had the use of a 1961 Chevrolet. Whether it was his or not, I don;t know.

Q I see. Did he have the use of a 1961 convertible Chevrolet at the time that you employed him, sir?

A My recollection is that he did.

Q I see, sir. And did you have information, sir, that his narcotics business was of such a character that he could have purchased that automobile within the short period of time he had been at liberty?

MR. SMITHSON: Objection. It presupposes a knowledge on the part of the witness that Joseph Jackson had a narcotics

1558 business.

THE COURT: The objection is sustained.

BY MR. JOHNSONL

Q Is it not correct, sir, that you did have some information about his being involved in the narcotic traffic? Am I mistaken about your testimony in that regard?

A Are you talking about my previous testimony?

1559 Q Yes, sir.

A My previous testimony was in answer to your question, was Jospeh Jackson an associate of narcotic traffickers, or something substantially the same as that.

Q And you answered, yes, sir?

A Yes, he was known to me as an associate.

Q As a what, sir?

A As an associate.

Q What kind of an associate?

A That he had been in the company of people who had been identified in the narcotic traffic.

Q In what type of connection, sir?

A There was no narcotic trafficking on his part that I could prove then or now.

Q I see. Whether you could prove it or not, did you have information about it, sir?

MR. SMITHSON: I think that is wholly improper, Your Honor.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

1559

Q Now, did he agree at tha time to become an employee of the Narcotics Bureau?

A That is correct.

Q What did you promise him in return for his employment?

1560

A Reimbursement of his expenses.

Q That is all?

A That was it, yes.

Q In other words, what type -- living expenses?

A Expenses he would incur in rendering assistance to the Government.

Q I see. Would that include his automobile?

A It would not.

Q Did he use that in connection with his business?

A The automobile?

Q Yes, sir.

A He would meet us with the automobile, yes, sir.

Q Didn;t he take Doris Gardiner to work every day in it?

A I never hear this.

Q Didn't you have surveillance of her after January 11, as you indicated fornerly, sir?

A Yes, I did.

Q Did you see him take her to work in that automobile, sir?

A I don't really recall any date that I observed that.

Q Did you see him take her from her home from that place in that automobile, sir?

A I don't recall that.

1564 MR. FIRST: That was mine. That was $9.00.

THE COURT: I might say I took those records, those travel vouchers that are made up for agents, and I went through them myself, and I have my lae clerk looking at them now.

Theh don't take one individual special employe and deal with it; but on the contrary, ut has cases all together, with numbers; and there is no way that you can pick out and say, this was for this case.

MR. JOHNSON: May we do this: Hide the rest of it and show him what is at the top of it? I just want to see the top of that.

THE COURT: I am awfully sorry, but it isn't anything that is singled out for a particular employe. It is not.

MR. JOHNSON: Well, it says on there that it is subsistence. It says that.

THE COURT: That is not correct that it says that.

MR. JOHNSON: May I see it, if Your Honor please?

THE COURT: I would have to send for the things.

MR. JOHNSON: Ma'am?

1565 THE COURT: I would have to send for the things.

I am going to sustain the objection to this line of questioning.

1565 MR JOHNSON: Will you stipulate, Mr. Smithson, that the top of that card, it reflects how much money was paid him, and is designated subsistence by the Narcotics Bureau?

MR. SMITHSON: No, sir, because these, sir, are reimbursements to the agent for any funds which they paid, which includes agents' subsistence on the road. It does not mean subsistence of an employee, sir.

MR.MITCHELL: I dnn't have anything to do with it, Your Honor, but it seems to me, in the interest of fairness, we ought to see it and see what it says. I wouldn't want to --

THE COURT: They haven't kept records just for you or for the others. They have kept these records all together. They are not signled out for the individual ones, and they are not singled out for individual cases.

MR. MITCHELL: Your Honor, the only thing I say is this, seriously, I am not in this dog fight, but I just don;t think that by this method that they can dircumscribe Mr. Johnson's area of examination.

THE COURT: They can what?

MR. MITCHELL: That they can circumscribe or limit

1566 his area of examination merely because they say it is for something else.

THE COURT: He can ask this witness if he knows.

MR. MITHCELL: If he knows of his personal knowledge.

MR. JOHNSON: Yes, Ma'am.

MR. MITCHELL: If he doesn't, he would have the right to bring the record.

1566 THE COUPT: He won't have the right to bring the records. I have told you that a half dozen times.

MR. JOHNSON: She is not going to do that. Let's don't press it.

1569 Q Tell me this, sir. You were in on the investigation of this case all the time, weren't you, sir?

A I was.

Q You know who was in -- from your point of view, from the narcotic agents' point of view, what narcotic agents were in it?

A Prior to my arrival in Washington, I understanf that there had been an investigation by the Washington field agents here.

Q What time did you arrive in Washington?

A Au ust the 28th, approximately three weeks before the date you mentioned earlier.

Q Now tell me, sir, when you got here, were you ever

1570 informed who was in charge of this investigation, this particular one, as far as agents are ccrccrned?

A I don't recall anyone being in charge of the investigation.

Q It has no direction as far as the agents that were engaged in it were concerned, is that right?

A It was a joint investigation participated in by all members of the office.

Q But no one gave any directions, is that correct?

A The information developed by each individual agent was shared with the others. It was a joint affair, as I stated earlier.

1570

Q You mean all got together and made up your minds in unison as to ehat was going on?

THE COURT: Mr. Johnson, he asid that they shared information. I don't think your question restates what he said.

MR. JOHNSON: I see.

BY MR. JOHNSON:

Q Well now, wasn't there some organization to this investigation?

A There was organization.

Q Sir?

A That is correct, there was organization.

1571 Q Who organized it?

A The agents pooled their information of action, and various other factors that were involved in the investigation.

Q All the agents?

A The information was shared jointly among all the agents.

Q That is from the start of the investigation in the case?

A The investigation was under way when I arrived here.

Q After you got here, all the agents got together and determined what the course of action was going to be in this case?

A Any information developed by the individual agent was brought tp the attention of the other agents.

Q All the other agents in this case?

MR. SMITHSON: I object to the repetition, Your Honor. Can't we please proceed. Obviously, he is trying to go into something that is not proper on cross examination. These agents have a right to

set up their own organization and run an investigation as they choose, and it is not a subject matter for cross examination of for disclosure.

MR. JOHNSON: If Your Honor please, I think I am entitled --

THE COURT: Mr. Johnson, I think we must stick to this case. We are not here to investigate how the Bureau of Narcotics carries on its business. We are only here to make inquiry about this case.

MR. JOHNSON: I agree with Your Honor.

THE COURT: We must make progress.

MR. JOHNSON: If Your Honor please, I think we would make progress if you would direct Agent Heneghan to answer my questions specifically, yes, or, no, when they are capable of being answered that way.

MR. SMITHSON: I rise to the objection to the inclusion of the general phrase, "this case," since Mr. Johnson represents the Defendant Gardiner, and that is the sole matter of his cross examination in this particular case. I ask it be limited to any investigation of Doris Louise Gardiner.

THE COURT: I think it should properly.

MR. JOHNSON: Is that Your Honor's ruling?

THE COURT: Yes, I will make that ruling.

MR. JOHNSON: Then I may not ask anything -- so that I may know what the limits are, if Your Honor please --

THE COURT: The limit is this: You are representing Doris Gardiner.

MR. JOHNSON: Alone.

1573 THE COURT: Yes, alone. These other defendants have other counsel.

MR. JOHNSON: Yes, ma'am.

THE COURT: They will make their own inquiry, if they are fit to do so, about their part of this case. Now you are representing Doris Gardiner.

MR. JOHNSON: Well, if Your Honor please, I will abide by that and that is the only person I do represent.

THE COURT: We will be here forever if we have to go into how the various departments of Governments of Government run their business.

MR. JOHNSON: If your Honor please, I don't want to do that. If I have trespassed, I want to apologize to you.

BY MR JOHNSON:

Q Now in this case, sir, with reference to Doris Gardiner, when did you and Joseph Jackson and Agent Broadnax or any other agent get together and make your plans for introducing Joseph Jackson as Agent Broadnax's brother?

MR. SMITHSON: Objection to the question. It is confusing. As I understand the testimony, Jackson introduced Brcadnax. It was an obvious misstatement in the question and it is misleading to the jury, as it was to me. I object.

THE COURT: The objection is sustained.

1574 BY MR. JOHNSON:

Q Did there come a time, sir, when you and Agent Broadnax and Joseph Jackson and Agent Reed got together to fix up this story.

Q Did you participate, did you ever know it was going to happen?

1574 Q Did you participate, did you ever know it was going to happen?

A I was aware that the special employe would introduce Agent Broadnax to Doris Gardiner.

Q As his brother, the question is.

A I don't recall being informed that he would idnetify him as his brother.

Q In other words, Joseph Jackson didn't tell you how he was going to accomplish this, is that right?

A He said he was going to make an introduction.

Q But he didn't go into the details of how he was going to accomplish this, did he?

A Not prior to January 11, he did not.

Q So you don't knw what device or other lies that he told Doris Gardiner, do you?

A I don't know of anything he told Doris Gardiner.

Q You knew it was a lie when he told it -- that Jackson was his brother.

MR. SMITHSON: Counsel is testifying.

THE COURT: The objection is sustained to the

1575 question.

BY MR. JOHNSON:

Q You know that was an untruth when Jackson introduced Broadnax as his brother, didn't you?

A You are telling me that he did.

Q Is is an untruth?

MR. SMITHSON: I think that is improper.

THE COURT: Mr. Johnson, it is his personal knowledge that you must inquire about, not what somebody else said or told him.

BY MR. JOHNSON:

Q Tell me, sir, did you know that Joseph Jackson, in order to overwhelm this girl --

THE COURT: Now just a minute.

MR. SMITHSON: Objection.

THE COURT: Mr. Johnson, you are clearly undertaking to testify yourself.

MR. JOHNSON: I intend to prove this, if Your Honor please.

THE COURT: If you want to take the stand now, take an oath and take the stand and be a witness, that will be all right. But at the present time, this witness is on the stand, and you are to put questions to him, and you are not to testify.

MR. JOHNSON: I agree with Your Honor. Everything that I suggest to this agent, I intend to put a witness on the stand to prove; and if I found it out, I don't see how they didn't find it out.

1578 MR. JOHNSON: "

Q Now, on January the 11th, sir, Joseph Jackson came up in a different vehicle from yours, didn't he?

A That is correct.

Q Did you search him?

A I did.

Q Why?

A I searched him for money and contraband.

Q Was that because you knew he had been associated with the dope traffic, people in the dope traffic?

A Tht is a matter of policy.

1578 Q I see. Now, where did you search him, sir?

A On Georgia Avenue.

Q At what place, sir?

A Near Upshur, in the vicinity of Upshur.

1579 Q Where were you and where was he, sir?

A We were on the -- we were in the car, as I recall.

Q What we?

A Joseph Jackson, the person being searched.

Q Where were you seated?

A I was seated in the car.

Q Where in the car, sir?

A IN the right front.

Q Where was Agent Jackson?

MR. SMITHSON: Jackson, agent?

MR. JOHNSON: Well, he is an agent of sorts.

MR. SMITHSON: I object to the comment. I think it should be stricken. Counsel knows better.

MR. JOHNSON: He was an employe.

BY MR. JOHNSON:

Q Where was employe Jackson?

A My recollection is that he was in the back seat.

Q How did you search him if you were sitting in the front and he was sitting in the back?

A I asked him to remove everything from his pockets.

Q In other words, he searched himself?

A He removed the articles from his pockets, and I proceeded to search and examine --

Q How did you do that, sir?

MR. SMITHSON: May the witness finish his answer,

1580 please?

THE COURT: Please allow the witness to finish his answer before you put another question.

BY MR. JOHNSON:

Q You removed articles from his pockets --

MR SMITHSON: May the witness finish his previous answer, Your Honor?

THE COURT: Yes.

THE WITNESS: My answer was that he removed the articles from his pockets, I examined these articles, and then searched his person.

1581 BY MR. JOHNSON:

Q How did you do that, sir?

A By feeling his pockets.

Q Over the back of the seat?

A That is correct.

Q What did he have on?

A I don't recall the clothing he was wearing at the time.

Q Do you know what time of year it was?

A It was in January.

Q Didn't he have an overcoat on?

A I don't recall whether he had an overcoat or Jacket.

Q Didn't you have one on?

A I don't recall how I was dressed.

Q So you don't recall what search you made of him, do you?

1581 A I do recall the search.

Q How did you search him?

A In a manner I just testified to, by asking him to remove the articles from his pockets, examining those, and feeling his clothing.

1585 Q Did there come a time when he told you about her?

A Yes, he did.

Q When was that?

A This was some three, three and a half months later.

1586 About three months later.

Q What time?

A It was the early part of January.

Q How early in January?

A Perhaps as long as a week prior to January 11.

Q I see. Now, he told you that he knew Doris L. Gardiner, is that right?

MR. SMITHSON: Still calling for hearsay, Your Honor.

THE COURT: The objection is sustained.

MR. JOHNSON: If Your Honor please, he just said so.

THE COURT: You have been continually calling for hearsay. I have been asking what he was told.

THE COURT: You are asking him what somebody else said to him. You are not calling the person who said it to testify, Mr. Johnson.

You know what hearsay information is, or hearsay evidence is.

MR. JOHNSON: If Your Honor please, I am not introducing it for the truth of the fact, merely for the occasion as to time.

THE COURT: Well now, you have heard the ruling,

BY MR. JOHNSON:

Q In the early part -- you say approximately a week from January 11, as nearly as you can recall?

A As near as I can recall.

Q And did he tell you -- without disclosing what the conversation was, did he tell you the nature of his acquaintanceship with her?

A I do not recall that, no.

Q Did he tell you just the bland fact that he had met her --

MR. SMITHSON: It is calling for a conclusory position out of hearsay, Your Honor. I feel it is improper.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Without telling us what details there were that he told you about Doris L. Gardiner, can you tell me, was there more that he told you than the fact that he knew her?

MR. SMITHSON: Your Honor, we have ascertained, and I have not objected to the fact that he received certain information. This is an attempt to frustrate and go around the rule of hearsay evidence, and I object.

THE COURT: The objection is sustained.

1594 MR. JOHNSON: If Your Honor please, I think as an adverse witness I am not required --

THE COURT: You are. I have sustained the objection to the form of your question.

MR. JOHNSON: Is it Your Honor's ruling that I can't ask leading questions? Is that Your Honor's ruling?

THE COURT: No, it isn't.

MR. JOHNSON: Yes ma'am.

1595 BY MR. JOHNSON:

Q Mr. Heneghan, did you or did you not, sir, direct him to work on Doris Gardiner after he made his disclosure to you a week or approximately a week prior to January 11?

A I don't know what you mean by the word "work" on Doris Gardiner.

Q All right. You don't understand the meaning of the word work?

A The sense in which it was used.

Q Do you know --

A That I told him to work on Doris Gardiner. I don't understand what that means.

Q What kind of work was he supposed to be doing?

A He was supposed to be introducing Agent Broadnax to narcotic traffickers for purposes --

Q Wasn't the --

MR. SMITHSON: May the witness finish his answer, please?

THE COURT: You may read his answer as far as he had gotten; and then you may finish, if you hadn't finished, Mr. Heneghan.

(Whereupon the partial answer of the witness was read by the reporter.)

THE WITNESS: -- of Agent Broadnax making buys, purchases of narcotics from those persons.

1596 BY MR. JOHNSON:

Q Was he supposed to prepare the groundwork for that?

A He was to introduce Agent Broadnax.

Q You don't just go right in and introduce them cold turkey, do you?

MR. SMITHSON: Objection, it is argumentative.

BY MR. JOHNSON:

Q Tell us --

THE COURT: The objection is sustained.

1597 MR. JOHNSON: May it please the Court, in light of what I was trying to do, may I show Your Honor the top part of the Hansborough case?

THE COURT: I am familiar with this case. What is it you want to show me this case for?

MR. JOHNSON: That I should concentrate on the conduct

1598 of the agent if our issue is entrapment.

THE COURT: You are not concentrating on it. You are asking one witness a lot of hearsay about it, rather than getting the person that is involved.

1598 BY MR. JOHNSON:

Q Now, Mr. Heneghan, sir, there came a time, sir, when you took the Defendant Gardiner to the United States Commissioner, is that correct, sir?

A She was brought before the United States Commissioner, that is correct.

Q That was on March the 9th, is that correct, sir?

A That is my recollection, yes, sir.

Q That is the first time, is that right, sir?

A That is my recollection, yes, sir.

Q Now, that morning, did you confer with Mr. Smithson?

A I had a conference with Mr. Smithson that day, yes.

1604 MR. JOHNSON: I will tell Your Honor why I am asking the question.

Doris Gardiner says she signed that, if at all, downstairs in the Marshal's office on March 15, that she signed as a result of being --

THE COURT: I understand. Wait a minute. You know, Mr. Smithson has said that he didn't expect to use the statement that was made down there. But now if you bring it up, of course you are introducing it.

MR. JOHNSON: I am only introducing about the one, Defendant's Exhibit 15, is all she has ever testified to.

MR. MITCHELL: Government't Exhibit.

THE COURT: No, no, but if you go --

MR. SMITHSON: Counsel's voice is carrying too loud.

THE COURT: What did you say?

MR. SMITHSON: Counsel's voice carries here when it apparently doesn't down there.

THE COURT: All I am saying, if you interject this thing about the 15th and signing of documents on the 15th, then you are very likely to open the door to the other.

MR. JOHNSON: I run that risk. Then Mr. Smithson ought to be prepared to have another attorney here.

1605 MR. SMITHSON: I don't know, Your Honor, that that is true. Obviously, I don't believe that that line of inquiry is proper. That is the reason I objected. Anything past the 8th or 9th of March, I submit to Your Honor, is improper.

THE COURT: The trouble about it is that she claims it was past that.

MR. SMITHSON: I realize that.

THE COURT: She says it was on the 15th.

MR. SMITHSON: That is right, in so far as her testimony with regard to this particular exhibit. Now, if she opens the door as to the 15th, then the Pandora's box is opened again at the direct insistance of the defendant and her counsel in this regard. We go in again to Mr. Tinney, again to the Government's representation, and her testimony before a grand jury.

THE COURT: Really, you are cross examining this witness, as I understood it.

MR. JOHNSON: Yes.

THE COURT: You reserved the right to cross examine. Now are you cross examining him?

MR. JOHNSON: Yes.

THE COURT: Then your cross examination should have to do with his direct examination.

1606 MR. JOHNSON: That is right.

THE COURT: There is nothing in the direct examination thus far that is before the jury about this 15th or Doris Gardiner's claim.

MR. JOHNSON: No, that is right.

THE COURT: So after you bring that in, then you have a right to take that up; but it seems to me this is improper now.

MR. JOHNSON: That is why I suggested I may call him back. Your Honor suggested I might as well have him all since he was here now. I was going forward and finish.

1607 Whereupon --

JOSEPH R. JACKSON

was called as a witness by the Defendant Gardiner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, sir?

A Joseph R. Jackson.

Q Your age, sir?

A Thirty-seven/

Q Your occupation, sir?

A Non-employed?

Q Are you employed by the Bureau of Narcotics?

A No, not now.

Q When did your employment cease?

A I don't know the exact date.

Q Approximately?

A December.

Q December?

A I imagine it was. I am not sure.

Q I beg your pardon, sir?

A December, last year. I am not sure.

Q December of what year?

A December '61.

Q Weren't you employed by the Narcotics Bureau in January of '62?

A I don't know. I don't think so. I could have.

Q Don't you remember going up to Doris Gardiner's house?

A If it was in January, I don't know.

MR. SMITHSON: Counsel is testifying and leading the witness. I think he can ask proper questions.

MR. JOHNSON: If Your Honor please, this is a shocking surprise to me.

THE COURT: He said that he wasn't sure.

Q You mean you don't remember going up to Doris Gardiner's

jouse with Agent Broadnax?

A I don't remember whether it was in January or not. I don't know.

Q Do you remember going up -- how frequently did you go to Doris Gardiner's? Was it because you went there so frequently?

MR. SMITHSON: Objection, three questions there, Your Honor. I object to the form of the question.

1609 MR. JOHNSON: I will withdraw that, if Your Honor please.

BY MR. JOHNSON:

Q How long have you known Doris?

A Oh, approximately five years.

Q Did you know her -- You were convicted of a criminal offense and in Lorton Penitentiary, were you not, sir?

A That is right.

Q What is the offense --

MR. SMITHSON: I believe counsel is impeaching his own witness.

MR. JOHNSON: Not my witness. This is an adverse --

MR. SMITHSON: If you call him, you are impeaching, and it is improper.

MR. JOHNSON: I suggest, Your Honor --

THE COURT: It is your burden, you know.

MR. JOHNSON: It is my burden.

THE COURT: You are calling him.

MR. JOHNSON: I suggest he is an adverse witness.

THE COURT: Even if he is an adverse witness, this isn't a line of inquiry, when you call him as your witness.

MR. JOHNSON: I don't claim that that impeaches his credibility. I am merely putting him where he first met Doris.

1610 THE COURT: Just a moment. It is not a proper question when you are calling him as your witness.

BY MR. JOHNSON:

Q Did you meet Doris Gardiner when you were in prison?

A Yes, fir.

Q Did you arrange during your prison days to have money sent over to Doris Gardiner?

A Yes.

Q Gifts sent over?

A Well, we exchanged gifts, put it that way.

Q She sent you gifts?

A Definitely.

Q And you sent her gifts?

A That's right.

Q Did you have your mother visit her while she was in the penitentiary?

A Of course, I didn't see anything wrong with it.

Q Did your mother take your children down to visit?

A She came down to see me and in turn I told her to go over there and see Doris.

Q You sent them over?

A My mother came down to see me, and I sent her over with the kids to see Doris.

1611 Q With the children.

A That's right.

Q And were you a more or less frequent visitor at Doris Gardiner's house?

A Only when she called me.

Q I see.

A Or I carried her there.

Q Now, did you or did you not take her back and forth to work?

A I think on one occasion I carried her to work.

Q Did you ever go and get her?

A On several occasions, yes.

Q Weren't you well known to the employees of the Food Fair as her boy friend.

MR. SMITHSON: I don't know how this witness could answer that. Counsel knows this.

THE COURT: I can't hear both of you gentlemen at the same time. You will have to speak one at a time.

MR. SMITHSON: Your Honor, the question asked of this witness, weren't you known to employees of someone else as some relationship to Doris.

Counsel has been a member of this bar for years, Your Honor. He knows proper questions. That is wholly improper. He has been insisting on asking this type of questions yesterday and today.

1612 THE COURT: Mr. Johnson, the point is well taken. This witness can't tell you what other people know.

MR. JOHNSON: Yes.

THE COURT: He can only tell you what he knows.

MR. JOHNSON: Yes, ma'am.

BY MR. JOHNSON:

Q As a matter of fact, sir, don't you know, and have you not seen the employes of Gordon's Super Market at 1818 Benning Road in the company of Doris Gardiner?

A When I go to the store, I might see anybody. I don't say that I knew her employer. I can't say that because I was never introduced to the man or any of the other employes there.

THE COURT: Just a moment.

Mr. Jackson, would you mind taking your hand away from your face? Your voice will carry better.

THE WITNESS: Yes, ma'am.

BY MR. JOHNSON:

Q Now, Mr. Jackson, when did you first become employed by the Narcotics Bureau as an employe?

A After -- I could say in June, I assume. I don't know. June 1961.

Q Now, will you tell us what was the occasion of your becoming employed by the Narcoties Bureau?

1613 MR. SMITHSON: Object to that, Your Honor. It goes into other matters that are not concerned here.

THE COURT: The objection is sustained.

BY MR. JOHNSON:

Q Who did you talk to first about becoming employed as an informer?

A Treasury Department.

Q Who in the Treasury Department?

A I don't know who it was.

Q Was it --

A An agent, all I can tell you. I don't know his name.

Q What was the business with the Treasury Department?

A Read signed statements by some men saying that I did some kind of note that wasn't proved.

THE COURT: I beg your pardon. Just a minute. Read the answer.

(Whereupon the answer was read by the reporter.)

BY MR. JOHNSON:

Q Perhaps I didn't understand you. You said that somebody signed statements?

A Yes, somebody signed a statement, certainly.

Q Somebody signed statements about what, sir?

1614 A About just what you asking me. If you want to ask the question again.

Q What was I asking about?

A I don't know. You ask me.

MR. SMITHSON: I think we ought to go ahead, Your Honor. We will never get anywhere now.

THE COURT: Put your next question, Mr. Johnson. Let's get ahead.

BY MR. JOHNSON:

Q As a matter of fact, weren't you signing a statement about a counterfeiting?

A I haven't signed any statement.

Q Did somebody charge you with handling counterfeit bills?

THE COURT: You have gone right back to the thing I told you was improper for you to ask. You called him as a witness.

BY MR. JOHNSON:

Q Now, when you first started talking to the narcotic people, did they tell you why you ought to become an informer?

MR. SMITHSON: Your Honor, it is hearsay.

THE COURT: The objection is sustained.

MR. JOHNSON: If Your Honor please, may I show his background and shy he became a police informer at all? If I may not, I will desist, if Your Honor please. I don't mind if Your Honor makes the ruling.

1615 THE COURT: No.

MR. JOHNSON: I may not?

THE COURT: No. We are not going into all of his background of being a police informer, if he was, or narcotic informer. We are not going into that. That would take us into all the cases he has ever worked on, if he has worked on any others.

MR. JOHNSON: I beg your pardon. I see what Your Honor's idea is. I don't want to go into any of the other cases that he has worked as a narcotic informer on. I merely wanted, if Your Honor please --

THE COURT: Just put your question, Mr. Johnson.

MR. JOHNSON: If Your Honor please, it leaves me disturbed as to whether I might not transgress if I ask the question.

THE COURT: What is the question. If you will put the question, I will rule on it.

BY MR. JOHNSON:

Q Isn't it true, sir, that you were induced to become an informer because you had become involved in a counterfeiting charge and you became an informer so as not to be prosecuted as a counterfeiter?

1616 A I don't quite understand the question. Would you mind repeating it again, sir?

Q As a matter of fact, did the Treasury Department turn you over to the narcotics people as a prospective informer?

MR. SMITHSON: That is not the same question, Your Honor. Left an inference with this jury. I ask that this question be stricken and the previous question read to the witness. I think he is entitled to that.

THE COURT: Very well, read the previous question.

(Whereupon the indicated question was read by the reporter.)

THE COURT: Do you understand that question now?

THE WITNESS: Yes, Your Honor.

THE COURT: You may answer it.

THE WITNESS: I wasn't turned over to anyone. The Narcotic Burear of the Federal agents from the Narcotic Bureau talked to me in reference to the traffic of narcotics. I didn't know anyone or

don't know anyone that deals in narcoties. It was just the fact that each -- or the person had the narcotic in her hand. I didn't know that the person had narcotics. If I had known the person had narcotics, I would never have carried the agent there.

1617 BY MR. JOHNSON:

Q I see. And it is your testimony, sir, now, that you never informed the narcotic people that Doris L. Gardiner had narcotics or was dealing in narcotics?

A I most certainly did not. In fact, I told the agent that I didn't want them to involve Doris in anything as far as narcotics was concerned, and they said as long as she didn't touch it, and they were going to try to see to it that she didn't touch it, but it so happened that when I got there or the agent and myself, Doris had it in her hand, because the previous arrangement was with her over the telephone that she was going to introduce me to somebody else that dealt in narcotics. As I said previously, I don't know anyone that deals in narcotics.

Q Now, sir, is it true, sir, that despite what you have just been saying, that the first thing you said to Doris when you introduced Broadnax as your brother was that all narcotic transactions will take place with my brother?

A As far as introduction, yes.

Q So then you did then, sir, induce Doris to have some narcotic transactions with Broadnax, did you not?

A No, I did not.

MR. SMITHSON: Objection, it is leading. It is an improper question. It is a conclusion that he has induced her. He has
1618 answered that that he did not.

MR. JOHNSON: I don't understand what his objection is.

THE COURT: You are objecting to the question?

MR. SMITHSON: I certainly do, Your Honor.

THE COURT: All right. The objection will be sustained. The question will be stricken, and the answer.

Put your next question, Mr. Johnson.

BY MR. JOHNSON:

Q Now, so that I may get this straight, it was your understanding with the narcotic people that you weren't to involve Doris with the narcotic trade, is that right?

A As far as --

Q Handling or touching?

A That is right.

Q And that she was merely to -- you were merely to have her introduce Broadnax to someone that was handling narcotics?

A Through former conversation with her, she told me that she knew everyone that dealt in narcotics.

Q But your understanding with the narcotic people was that they weren't to touch her, that they were to merely get you -- you were to merely get her to introduce them to the people that were handling narcotics, is that right?

1619 A That is right.

Q Well now, why did you tell her on that day that all narcotic transactions you are to conduct with Broadnax?

A Well, I don't think it is obvious she told you that I told her not to touch the stuff. It so happened she touched it or had it in her hand. I tried to knock it out, but I couldn't.

Q Is it your testimony when you first came in the room with Broadnax, she had narcotics in her hand?

A After we had got down and were seated, yes.

Q Now, is it your testimony when Broadnax was there the first time, she had narcotics in her hand?

A That's right.

Q And you tried to knock it out of her hand?

A I most certainly did, to keep her from giving it to the agent, because I knew once she passed it to the agent, that was the end of it.

Q Now, Mr. Jackson, since you got out of prison, have you been employed anywhere?

MR. SMITHSON: I think this is improper, Your Honor.

THE WITNESS: Yes, I have been employed, certainly.

THE COURT: I will overrule the objection.

MR. SMITHSON: I will withdraw it, Your Honor.

BY MR. JOHNSON:

Q How long?

1620 A Joseph R. Jackson was employed until December the first. I have a legitimate income of $175.00 per week, which I paid income tax on. You can check that, sir.

Q You had an income of $175.00 per week?

A That's right, legitimately, sir.

Q Since when?

A Since December 14, 1961.

THE COURT: Did you say a week or a month?

THE WITNESS: A week.

BY MR. JOHNSON:

Q Since December you have had $175.00 a week?

A That's right.

1622 Q I see. And did you tell her you were working for yourself?

A She knew I was getting ready to go in business for myself, yes, sir.

1623 BY MR. JOHNSON:

Q Now, sir, when did you acquire this 1961 Chevrolet convertible?

A I don't own a 1961 Chevrolet convertible.

Q Whose is it?

A The woman that owns it, I imagine; she has her name on the registration card.

Q Don't you know who owns it?

A Her name is on the registration card.

Q Do you know who owns that car you have been driving?

A She can be paying for it still on the finance company, I guess.

THE COURT: Tell him who owns it.

Is that what you want him to tell you?

MR. JOHNSON: Yes, ma'am.

THE COURT: If you know.

THE WITNESS: Mrs. Savoy owns it.

BY MR. JOHNSON:

Q Mrs. Savoy?

A That is right.

Q Is she a girl friend?

A Yes.

MR. SMITHSON: I think we are getting pretty far afield now.

MR. JOHNSON: No.

MR. SMITHSON: I think we are getting pretty far afield in any case such as we have before this jury. I believe we ought to come to some termination, Your Honor.

MR. JOHNSON: If Your Honor please, I think this is a very important development.

MR. SMITHSON: I object for immateriality and irrelevancy.

THE COURT: The objection is sustained.

1628 BY MR. JOHNSON:

Q Isn't it true, sir, that you told Doris Gardiner, as a matter of fact, that you were in trouble in Virginia, that you left your car over there on account of your bond?

THE COURT: Just a minute. You may answer that.

THE WITNESS: Yes, I think so.

MR. SMITHSON: Now, since it is answered, may I ask the Court to strike the inquiry? This is his witness which he is again attempting to impeach, Your Honor.

MR. JOHNSON: How am I impeaching?

MR. SMITHSON: Because it is an attack on whether or not
1629 the witness has engaged in certain activity or said anything to this particular person. I think it is improper, Your Honor.

THE COURT: The objection is sustained.

MR. JOHNSON: May I come to the bench and tell you what I want to do?

THE COURT: Yes, you may come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: Mr. Johnson, you are examining this man --

MR. JOHNSON: Yes' ma'am.

THE COURT: -- as though the Government had put him on and you were now cross examining him. You have called this witness yourself, and you have called him because you want to establish your defense of entrapment.

MR. JOHNSON: Yes, ma'am.

THE COURT: You have the burden, of course, of establishing this defense.

MR. JOHNSON: Yes, ma'am.

THE COURT: Then, the Government, of course, has its obligation with reference to it, too.

MR. JOHNSON: Yes, ma'am.

THE COURT: Now, you are not asking this witness anything about the circumstances, very little about it.

1630 MR. JOHNSON: If Your Honor please, I believe I outlined my case to the jury. I think I told Your Honor, and if Your Honor will read it --

THE COURT: You didn't tell me how you expected to prove it though.

MR. JOHNSON: May be I had better do it again. I expect to show this man induced her to go into narcotics by telling her he was in trouble.

You prevented me from bringing out the fact that he was in love with her and our --

THE COURT: I haven't prevented you from doing any such thing.

MR. JOHNSON: I thought Your Honor had. I tried to go into the background with him, how long he had been associating with her, what he had done with her, how well --

THE COURT: You haven't asked him anything about being in love with her.

MR. JOHNSON: Maybe I made a mistake. But that is the background of it.

THE COURT: You mean that you are asking about this automobile because you wanted to show that he told her that and then induced her to buy or sell narcotics to get the money? Is that what you are talking about?

1631 MR. JOHNSON: Yes, that is right.

THE COURT: All right.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held:)

BY MR. JOHNSON:

Q Now, sir, your testimony was you did call her and tell her you were in trouble in Virginia, didn't you?

A Yes, I did.

Q And that you needed money, is that correct?

A But the fact is, I didn't get it from her.

Q No, sir. I said, you told her you needed money, is that right, sir?

A Yes, sir.

Q You wanted her to do something?

A I didn't want her to do anything.

Q Now, what was the purpose of your calling? You weren't in trouble in Virginia, were you?

A Well, I had been involved in a little scrap, yes, sir.

Q What was it you were involved in?

MR. SMITHSON: Objection. It is irrelevant, Your Honor.

MR. JOHNSON: I want to see whether he told her.

THE COURT: All right, you may ask him what he told her about it.

1632 BY MR. JOHNSON:

Q Yes, what did you tell her about it?

A I told her I had got in a fight in Virginia.

Q Sir?

THE COURT: What else did you tell her about it, if anything?

THE WITNESS: Oh, I don't recall verbatim what I told her at that time.

THE COURT: Can you remember the substance of it? If you do, tell us that.

THE WITNESS: The substance of it was that I had a fight in Virginia with another fellow.

BY MR. JOHNSON:

Q Wasn't your car supposed to be over there in hock to a bondsman?

A My car couldn't have been over there because I didn't own an automobile at the time.

Q I mean this lady's car that you ride around in, wasn't her car -- you didn't tell her that it was the lady's car, did you?

A I couldn't hock the lady's automobile. I would have to hock my own.

Q You never told Doris that you had another girl friend whose car you were driving, did you?

1633 A I couldn't see where it was important to tell her.

Q I see, sir. But you did tell her that this car was in hock over in Alexandris and you had to have some money to get it out of hock, didn't you?

A Like I said before, Mr. Johnson, I don't recall telling her that the car was in hock and even so I couldn't hock another person's automobile.

Q Didn't you, sir, as a matter of fact, tell her that you were in a terrible lot of trouble, you killed a man, that --

THE COURT: Just a minute.

BY MR. JOHNSON:

Q -- that your car was in hock over there?

THE COURT: Just a minute, Mr. Johnson. You are putting too much into one question. Let's have one thing at a time.

BY MR. JOHNSON:

Q Didn't you tell her, sir, that your car was in hock in Virginia?

THE COURT: Well now, he has answered that.

MR. JOHNSON: Yes.

THE COURT: Now put the next thing.

BY MR. JOHNSON:

Q Didn't you tell her, sir, that you were in bad trouble over there, that you had to have some money in a hurry?

1634 A If I had killed a man, Mr. Johnson, I don't think I would be here testifying here, unless I was subpoenaed.

THE COURT: Now just a minute. He is asking you about whether or not you told Doris Gardiner certain things, not anything else. That is the question you are to answer.

THE WITNESS: Your Honor, I told --

THE COURT: Just a minute. I want the reporter to read the question to you. Listen to it, and then answer that question.

MR. JOHNSON: May I rephrase the question?

THE COURT: Well, if you want to rephrase it.

BY MR. JOHNSON:

Q Isn't it true, sir, that you told her that the man was shot in Virginia and that you were in some bad trouble?

A I think I have answered that question. I said I don't recall verbatim whether or not I did say that.

Q Isn't it true, sir, that you actually told her that a man was shot in Virginia, and you had to have $1500?

A Can I ask you a question, Mr. Johnson?

THE COURT: No, you are not to ask him a question. You are to answer that question.

THE WITNESS: I don't recall, Mr. Johnson.

1636 Q Answer this question, yes, or, no. Are you or are you not married?

A I have been married.

Q When did you get divorced?

A I am not divorced.

Q During this period, sir, when you were riding around in a 1961 convertible, belonging to another woman, was your wife and children on welfare?

MR. SMITHSON: May I ask if this witness is on trial, Your Honor.

THE COURT: Are you objecting to this question?

1637 MR. SMITHSON: Yes, I am.

THE COURT: The objection is sustained.

1638 BY MR. JOHNSON:

Q Did you have any conversation with Doris Gardiner's mother about Broadnax being your bodyguard?

A Are you finished sir?

Q Sir?

1639 A Are you finished?

Q I beg your pardon?

THE COURT: Yes, he is finished. You may answer.

THE WITNESS: We talked any number of times.

BY MR. JOHNSON:

Q No, sir. Did you, sir, have a conversation participated in by you, Broadnax and this little girl's mother, in which she said: Are you your brother's bodyguard?

Did you have that conversation?

MR. SMITHSON: Objection, Your Honor.

THE COURT: The objection is sustained.

MR. JOHNSON: No further questions.

EVELYN ELIZABETH ROBERTS

was called as a sitness by Defendant Gardiner, and having been duly sworn, was examined and testified as follows:

1659 DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please?

A Evelyn Elizabeth Roberts.

Q Where do you live, Mrs. Roberts?

A 1506 Upshur Street, Northwest.

Q Are you related to the defendant Doris L. Gardiner?

A She is my sister.

Q Now, Mrs. Roberts, directing your attention to the month of January, 1962, and the latter part of December of 1961, did you live at that address at that time?

A Yes, I did.

Q Now, during that course of time, did you come to know a man who was called Ricky, or something of that sort?

A Yes.

Q Did you know Joseph Jackson?

A Yes.

MR. JOHNSON: Mr. Marshal, will you bring Agent Broadnax to the door.

THE COURT: Mrs. Roberts, would you keep your voice up as much as you can, please?

1660 THE WITNESS: Yes.

(A man enters the courtroom.)

MR. JOHNSON: Stand right there. Now, you may leave, sir.

(A man left the courtroom.)

BY MR. JOHNSON:

Q Is that the gentleman you came to know as Ricky?

A Yes.

MR. SMITHSON: I wish counsel wouldn't bestify, Your Honor.

MR. JOHNSON: I thought I was asking a question.

MR. SMITHSON: You asked, is the person known to you as Ricky and I can't think of a more leading question you could ask.

MR. JOHNSON: If Your Honor please, I am trying my best, but I think that everybody in this whole thing has testified that this man was called Ricky. I don't think there is any -- I don't think I have advantage of anyone.

THE COURT: Mr. Johnson, it is a rule that when you call a witness, you are not to ask leading questions.

That is a rule for everybody, regardless of who else is testifying.

BY MR. JOHNSON:

Q Is that the gentleman -- did you ever know that gentleman who came in?

A Yes, I did.

Q What did you know him as?

A Ricky.

Q Who did you see him in that house with?

A Joseph Jackson.

Q Now, did you see him there frequently or infrequently?

A Well, frequently, I would say.

THE COURT: What is your answer, please?

THE WITNESS: Frequently.

BY MR. JOHNSON:

Q Now, Mrs. Roberts, did there come an occasion when you were present, your mother was present, Ricky was present, and Joseph Jackson was present, in which a comment was made about the frequency of Ricky's visits?

A Yes, it was, by my mother.

Q Will you tell us what your mother said?

A She --

Q To Ricky.

A She asked him was he Mr. Jackson's bodyguard.

Q Now, do you know what relationship Ricky was supposed to be to Jackson?

A His younger brother.

Q Now, directing your attention to sometime in the month of January, 1962, did you have occasion to receive a telephone call from Joe Jackson?

1662 A Yes, I did.

Q Will you tell Her Honor and the ladies and gentlemen what Joe Jackson said to you over the telephone?

MR. SMITHSON: Objection, heresay.

THE COURT: Who was present?

THE WITNESS: You mean when the telephone conversation was? I answered the telephone. He talked directly to me.

THE COURT: The objection is sustained.

MR. JOHNSON: Well, if Your Honor please, this is the employee that entrapped the defendant. I am trying to show that -- I claim -- I claim, --

MR. SMITHSON: Objection.

THE COURT: I do not want to hear you say anything more of that kind.

MR. JOHNSON: Well, if Your Honor please, I claim that this man entrapped the defendant. I think that --

THE COURT: Will you please cease making those remarks?

MR. JOHNSON: Your Honor, may I not show the genesis -

THE COURT: You may come to the Bench.

(At the Bench.)

THE COURT: You want her to tell you what Joseph Jackson said?

1663 MR. JOHNSON: Yes, ma'am, an employee of the United States Government.

THE COURT: What theory?

MR. JOHNSON: That he entrapped this defendant into doing this and I think that that is right squarely in the hand.

THE COURT: You might as well be out in the street, you talk so loud.

I do not see how she could testify to something --

MR. JOHNSON: Well, I think that the basis has been laid for this in this evidence. Joseph Jackson, said he called --

THE COURT: Joseph Jackson is not the defendant. She is.

MR. JOHNSON: If Your Honor please, this man has claimed --

THE COURT: I know what they claim. I want to know what your theory is that it come it.

MR. JOHNSON: This man was directed by the Government for the initiation and development --

THE COURT: I am sorry, but the objection is sustained.

MR. JOHNSON: May I finish?

THE COURT: No, because I know what you are going to say. I know that your defense is entrapment.

MR. JOHNSON: Yes, ma'am, but I can't prove it until I show how he started entrapment.

1664 THE COURT: You will have to prove --

MR. JOHNSON: Only prove by what Joseph Jackson said. He didn't say it to Doris, if Your Honor please.

THE COURT: I am not going to argue. I have sustained the objection.

MR. JOHNSON: Does Your Honor want to know what the substance of the conversation was?

THE COURT: Just a minute --

(In open Court)

THE COURT: Will you come back, Mr. Smithson?

MR. SMITHSON: I am sorry, Your Honor. I thought the conference was over.

(At the Bench.)

THE COURT: I thought we had finished, too.

MR. JOHNSON: I think I better tell Your Honor what I propose to show by the conversation because the basis is already laid in evidence that Jackson called her, saying that he was in Virginia, that he had shot a man, that he had to see Doris, have some money right away.

MR. SMITHSON: I must object to that because he put the basis for that on to the defendant, whether or not he told her that he had shot a man and needed money. Now, he proposes to bring hearsay evidence in on this particular portion. It is obviously --

THE COURT: I have sustained the objection. I am not going to hear any more about it.

(In open Court.)

BY MR. JOHNSON:

Q Without delineating what the conversation was, did you receive a call from Joseph Jackson in January of 1962?

A Yes, I did.

Q Did you determine from what place Joseph Jackson was calling, without regard to the conversation that went on, as to the substance of it.

A You mean it was a long distance call?

Q Was it -- did it come from a state or the District of Columbia?

A Well, now, he said it came from Virginia -- I don't --

THE COURT: Do not tell us what he said.

THE WITNESS: Well I don't know.

MR. JOHNSON: I have no further questions.

1671 DIRECT EXAMINATION (Resumed)

BY MR. JOHNSON:

Q Mr. Jackson, will you tell us if you were convicted of any offense and what it was and when.

MR. SMITHSON: Of course, Your Honor, for the reasons I have heretofore indicated, it is impeachment of his own witness. I do not believe it is proper under the law.

THE COURT: Very well. I will permit it. I overrule the objection. You may answer.

THE WITNESS: I was convicted of robbery in 1950; in 1954 I was convicted --

MR. MITCHELL: I can't hear the witness.

THE WITNESS: 1954 I was convicted of carrying a concealed weapon after having been convicted of a prior felony.

1675 DORIS L. GARDINER,

was called as a witness by counsel in her own behalf, and, after having been sworn by The Deputy Clerk, was examined and testified as follows:

1677 DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please?

A Doris Louise Gardiner

Q You are a defendant in this case, are you not?

A I am.

Q Directing your attention to the gentleman that took the
1678 stand just before the noon recess and afterwards, Joseph Jackson, when and where did you first come to know him?

A A I met him while I was serving time at the Reformatory for Women.

Q What was the nature of your relationship with him?

A At first we had a work relationship. I had charge of the recreation in the auditorium where he was the movie projectionist.

Q And did anything develop from that work relationship?

A We established, I would say, a more intimate relationship.

Q Q Was it exemplified in the exchange of anything between the two of you except words?

A We wrote letters. He had this -- he sent money to me. We exchanged presents. His family visited me and his kids.

Q You say his family. What members of his family visited you?

A His mother, Miss Irene Keyes.

Q Anybody else in his family?

A His three daughters, Joyce, Jo Ann, and Carolyn.

Q Now, were you informed by Jackson as to whether he was married or unmarried or what?

A When we first started our relationship he told me he had been married but was divorced -- I mean, separated from his wife, and

1679 that he was getting a divorce.

Q Now, did there come a time that he visited you at the Woman's Reformatory after you got out?

MR. SMITHSON: Objection.

Q After he got out of the Reformatory.

A Yes.

MR. SMITHSON: I don't see the materiality of this, Your Honor.

THE COURT: I overrule the objection.

BY MR. JOHNSON:

Q Now, I am going to show you this, which is Defendant's Exhibit for identification No. 12, and ask you to look at it. (Hands)

Now, Miss Jackson -- I mean Mrs. Gardiner, Defendant's Exhibit 12 contains the words Jameel Ahmad as a visitor, the name of a visitor.

Can you tell Her Honor and the ladies and gentlemen of the jury who Jameel Ahmad was that made the visit on that day?

A That was Joseph Jackson.

Q Thereafter did you have any evidence of his continued interest in you subsequent to the time that he got out of Lorton and you were still in the Women's Reformatory at Occoquan prior to your release?

A Prior to my release?

1680 Q Yes.

A Yes.

Q What, if anything, did the defendant, -- I mean, did --

Now, with regard to time, can you fix the time of these evidences of his connection with you after his release and during the time when you still remained in custody at the Reformatory at Occoquan?

Can you give us the year that it happened, subsequent to his release? What year was it?

A I don't understand what you mean.

Q Was it 1961?

A When I saw him next?

Q No. When you saw him at the visit we spoke of. That visit was in May, was it not, this visit?

A I think it was April.

Q April.

MR. SMITHSON: Your Honor, counsel has been leading this witness. He put the name off that tape. He has now referred to this as in May as an indication of it. Can't we have an examination of his own witness without leading the witness?

THE WITNESS: I dan remember the dates, Mr. Smithson.

MR. JOHNSON: No, Mrs. Gardiner.

THE COURT: Just a minute. I think you should make an effort to frame your questions so they are not leading, Mr. Johnson.

1681 MR. JOHNSON: If Your Honor please, if that was an error, it was an unconscious error.

THE COURT: As a result of this card you saw Mr. Jackson, did you?

THE WITNESS: Yes. Yes, I believe it was on the fourth Sunday in April.

THE COURT: What year?

THE WITNESS: 1960

THE COURT: All right. Go ahead, Mr. Johnson.

BY MR. JOHNSON:

Q Now, with regard to the time just prior to your release and subsequent to this visit, did you receive anything from Joseph Jackson directly or indirectly?

A I received money from him indirectly after the authorities at the work house stopped him from visiting me.

MR. SMITHSON: I move that the answer be stricken. It was an obvious attempt by the witness to put something in that was not responsive to the question.

THE COURT: Well, I couldn't hear her. You get so close to that microphone it distorts your voice.

Mr. Reporter, bring your record here and read it to me.

(Thereupon, the reporter went to the bench and read the answer last given by the witness as follows:

1682 "I received money from him indirectly after the authorities stopped him from visiting me.")

THE COURT: I will strike the answer.

You listen to the question and just answer what he asks you and don't add anything to it.

BY MR. JOHNSON:

Q Did you receive any money from Joseph Jackson directly or indirectly after this visit of April the 20th?

A Yes. I received money indirectly.

Q Will you tell us how you received the money?

A At one time my uncle visited me. He sent, I think it was $10 or $20, and on another occasion I received money my mother brought.

MR. SMITHSON: Objection. I move that both answers be stricken because it obviously contains hearsay. This witness is trying to say that the money came from someone when it was not delivered from that person.

MR. JOHNSON: If Your Honor Please, I asked the witness if she received it indirectly.

MR. SMITHSON: That's the very point, Your Honor. Indirectly encompasses anything this witness wants to say. This witness can't testify where any of this money came from, if it did come from anybody.

MR. JOHNSON: If Your Honor please, I think she can very

1683 well testify.

THE COURT: Well, if you want to show that Jackson sent the money to her then you are going to have to show it by somebody through whom he sent it. She doesn't know who sent it. All she knows is that somebody brought it to her.

MR. JOHNSON: If Your Honor please, I think I revealed at the bench why I didn't bring one of the witnesses here.

THE COURT: That doesn't excuse you from proving it in the correct way, Mr. Johnson.

MR. JOHNSON: Well, will Your Honor issue a subpoena then?

THE COURT: Yes. Certainly.

BY MR. JOHNSON:

Q Now, Doris, after you -- was there anything extraordinary about your release?

MR. SMITHSON: Your Honor, I don't know what that means. But I think counsel better do something about that at the bench: what he means about extraordinary about the release.

MR. JOHNSON: Well, I don't think I want to go to the bench. I am just asking if there was.

MR. SMITHSON: Then, I move that the question be stricken. It is immaterial.

1684 THE COURT: I don't see any purpose in this question. This is long before these charges came up.

MR. JOHNSON: If Your Honor please, I merely want to show what the circumstances surrounding her release were.

THE COURT: There is nothing before me that indicates it is at all pertinent in this case.

MR. JOHNSON: Well, I believe I have shown a background that this man became employed with the --

THE COURT: I know what has been shown and the jury does, too. You don't need to state it.

MR. JOHNSON: If Your Honor please, there is no harm in stating it. It has been testified to.

THE COURT: This is not the time to state it. When you want to argue to the jury it will be at the end of the case.

BY MR. JOHNSON:

Q Anyway, you were released. At what time?

A You mean the actual day of my release?

Q Yes.

A December 2nd, 1961.

Q Tell us about your efforts to obtain employment.

A Before I left the institution I had worked in the culinary unit for six years, which is a non-industrial department. I worked under one steward. He had tried to secure a job for me in Arlington, Virginia, as a clerk in a drafting plant.

1685 Upon my release I told my parole officer, Mr. Gordon Davis, In turn, he called the Woman's Reformatory and talked to the steward, Mr. Adams. He told him the woman couldn't hire me until around the first of the year.

He also called a place in Virginia, a laundry, and they gave him the same reason, saying that they couldn't use me until the first of the year.

Later, two weeks later, I went back. Mr. Davis sent me to a Mrs. Hamlet, I think somewhere in the District Building.

Q Were you able to obtain employment after that effort?

A She called several places on the first day and I couldn't get a job. She told me to come back the following day, which I did.

She called Mr. Nathan Gordon, 1818 Benning Road. He promised to put me on part time. I explained to him I had just been

released from the institution, serving six years, and asked him if he could put me on full time and he said yes.

Q Were you employed part time there?

A For about a week.

Q And what was the date of your first employment?

A I think it was December 27th.

1686 Q Now, in between the time you had been released and the time you had become employed, had you seen Joseph Jackson?

A I had.

Q Frequently or infrequently?

A I would see him at least four times a week.

Q And did you receive anything or did you not receive anything from him?

A I received some money once before I was working.

Q How much was that?

A I think it was $40.

Q And Christmas time was at or about December. Did you receive anything from him at Christmas?

A Not on Christmas day. It was after Christmas.

Q How much was that?

A $60.

Q Now, during this period of time had you used narcotics?

A No.

Q Had you trafficked or dealt or associated with narcotic people?

A No. Not to my knowledge.

Q I see. Now, when you started to work for Gordon's how much was your salary?

A $1.00 an hour.

1687 Q And what was your average weekly pay?

A I would -- after income tax was taken out I received about $33 and some odd cents.

Q Every when?

A Every -- I would get paid one week on Saturday and the next week I would get paid on Sunday, because I had to work half a day on Sundays. The days I worked on Sunday I was paid on Sunday.

Q During this period of time how did you get back and forth to work?

A Sometimes I rode in a cab and sometimes I rode on the bus and several times Joseph Jackson carried me.

Q Did there come a time that you met the man you now know to be Agent Broadnax?

A Yes.

Q Do you know when that was with reference to Christmas of 1961?

A It was -- I am not certain if it was before Christmas or afterward. It was during the Christmas holiday.

Q During this period of time was Joe Jackson visiting you?

A Yes.

Q Now, who introduced you to the man you now know to be Agent Broadnax?

A Joseph Jackson.

1688 Q Who did he introduce you as?

A He introduced him to me as Ricky, his brother.

Q Had you made any engagement to traffic or deal in narcotics or to have or use them, or anything at that time?

A I had not.

Q Directing your attention to this period of time was Joseph Jackson introduced to your parents; your parent, your mother?

A He already knew my mother.

Q And did he know your sister?

A He knew my family.

Q And do you remember an occasion in which Joseph Jackson was present and the man you now know to be Agent Broadnax was present, when your mother made a remark to Agent Broadnax about the frequency of his visits?

A Yes.

Q Can you tell Her Honor and the ladies and gentlemen of the jury what that remark was?

A It was about the 4th or 5th time that Joseph Jackson and Agent Broadnax, whom I knew then as Ricky came to my house, and on the way out my mother asked Agent Broadnax if he was Joseph Jackson's body guard.

Q Now, with regard to the relationship between you and Joseph Jackson, did that relationship ripen into a closer relationship than mere friendship?

1689 A I would say it was more than just a relationship before I left the institution.

Q Did there come any time during that when you discussed a more serious relationship between you two?

A Somewhat serious.

Q Beg your pardon?

A Somewhat of serious.

Q Now, have you ever visited his home?

A His mother's, yes.

Q Can you tell Her Honor and the ladies and the gentlemen of the jury approximately when that was?

A It was during the Christmas holidays.

Q Did there come a time that -- first, did Mr. Jackson ever give you any information as to how he was employed?

A We had discussed some personal matters and I asked him what he was doing. He told me he was working in a government garage as a mechanic.

THE REPORTER: In what garage?

THE WITNESS: Some government building as a mechanic in a garage.

Q Did you know him to be a mechanic?

A I did.

Q Did he wear mechanic's clothes?

A Several times he came to my house he had mechanic's clothes on.

1690 Q With reference to sometime in the early part of January or the latter part of December did you receive any information from Joseph Jackson about an occurrence in Virginia?

A I received some information.

Q Beg your pardon?

A I did.

Q What was that information that you received from Joseph Jackson?

A He told me he had been in Virginia gambling and had had a misunderstanding with a man and had shot him.

Q And what, if anything, did he want you to do?

A He told me he had to get $1500; that if he paid this fellow's doctor's bills he could -- he would beat the charge.

Q Now, with regard to -- did he tell you how he thought that might be arranged for?

A He first asked me if I could loan him some money. I told him I didn't have any.

Q Did he make any other suggestions to you then or later?

A He asked me if I knew where I could get him any drugs.

Q What did you tell him in response to that?

A I told him I didn't know where I could get him any drugs.

Q Did he let it drop there?

A He did not.

Q When was the next time he spoke to you about it?

A We talked about it that same afternoon. I told him I didn't know anybody who had anything. He asked me again. I told him I didn;t know anybody.

Q Did he let it go at that?

A He did not.

Q What happened next about it?

A He asked again. He met me at work and asked me again. He asked me if I would let him go to jail for $1500 when I knew I could get some drugs for him.

Q How frequently between January -- between December, the latter part of November, and the deate of January 10, did he bring to your attention drugs?

A Every day.

Q How frequently in that period of time did he urge you to get it for him?

A Every day.

Q Did you finally agree to get drugs for him?

A I told him on my next day off I would try to see if I could find somebody.

Q Now, prior to the time -- prior to January 11, at 8:15, had you had any conversation with Mr. Jackson about his brother Ricky?

1692

A No.

Q Now, did there come a time when he did discuss with you the question of having his brother Ricky handle these things for him?

A Ask me that question again.

Q Did there come a time when he informed you that he wanted his brother Ricky to handle things for him in regard to obtaining money to pay in Virginia?

A Yes. On the -- I think it was the 10th of January.

Q Now, up until the time that he had mentioned these drugs to you had you used or sought to purchase or trafficked in any narcotics?

A I had not.

Q Did there ever in your conversations prior to this time and subsequent to the conversation about divorce -- did you discuss marriage with Jackson.

A He discussed it with me.

Q Now, subsequently to January 10, did there ever come a time when you received information as to Jackson's difficulties in drinking because of his trouble, or when was it that you did, if you did?

MR. SMITHSON: Your Honor, that is the most confusing set of three questions I have ever heard.

MR. JOHNSON: May I withdraw it, please, Your Honor?

THE COURT: Yes.

1693

BY MR. JOHNSON:

Q Did there come a time when Jackson was allegedly drinking because of his despondency about his Virginia troubles?

MR. SMITHSON: I don't know how unless the witness was present.

THE WITNESS: He drank in my presence.

THE COURT: Just a moment. The objection is sustained to this question.

BY MR. JOHNSON:

Q Did there come a time that Jackson, other than by telling you, of his trouble in Virginia, did something to convince you of the way he felt about you?

A Yes. He drank in my presence, in my basement, and Agent Broadnax was also present.

Q Now, suppose you tell us what happened.

A You mean the conversation?

Q Yes.

THE COURT: Raise your voice a little so we can all understand you.

THE WITNESS: He told me he was in trouble in Virginia and his brother, if I could get him some drugs for him his brother was going to see them in Baltimore for him.

BY MR. JOHNSON:

Q Now, directing your attention to the 15th day of March, did there come a time on that day that you saw Agent Heneghan?

1694

A I did.

Q Can you tell us approximately what time that was?

THE COURT: What is the date?

MR. SMITHSON: The question was 3/15, Your Honor.

MR. JOHNSON: On March the 15th.

(Pause.)

MR. JOHNSON: I withdraw that.

BY MR. JOHNSON:

Q Did there come a time on March 8 when you saw him? Agent Heneghan?

A Yes.

Q Can you tell Her Honor and the ladies and gentlemen what time of day it was that you saw him on March 8th?

A Around five minutes after 4:00.

Q How do you fix the time as five minutes after 4:00?

A I was trying to get home for a phone call I was supposed to receive at 4:00 o'clock.

11. The Court erred in directing the jury to consider the guilt of the defendant count by count upon the evidence adduced by the defendant without reference to the sole defense offered.

12. The Court erred in coercing the jury to decide the guilt of the defendant upon the basis of her additional instructions.

. . . . . .

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs. CRIMINAL NO. 289-62

DORIS L. GARDINER, ET AL.

Defendants.

DEFENDANTS INSTRUCTION NUMBER ONE

The jury is instructed that if they find that the defendant Gardiner was induced to commit the acts for which she now stands charged by Joseph Jackson, they are instructed to find her not guilty unless the government shows by evidence, beyond a reasonable doubt, that she would have committed those acts without any suggestion or persuasion by Joseph Jackson.

(Denied/s/Matthews, Judge)

DEFENDANTS INSTRUCTION NUMBER TWO

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The jury is instructed that the statements, oral or written, which the government produced are only to be considered as evidence

against the defendant in this case if they were freely and voluntarily given. If the jury finds that they were induced or made in the hope of reward or benefit for defendant Gardiner, even though Narcotic Officers and others denied giving any express promise or hope, the statements were involuntary, and should not be considered for any purpose at all.

(Denied/s/Matthews, Judge)

DEFENDANTS INSTRUCTION NUMBER THREE

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If the jury should find that said statements (March 8, ex. 15) were involuntary, then the entire testimony adduced in Court concerning the content of the statements should be disregarded in its entirety.

(Granted as to Ex 15/s/Matthews, Judge)

DEFENDANTS INSTRUCTION NUMBER FOUR

4.

If the jury finds as a matter of fact that the defendant Gardiner, was duped and deceived by the informer Jackson and that her transactions and conduct with narcotics was the product of such deception, or if the state of the testimony is such that the jury has a reasonable doubt that her conduct or her forbidden acts were the product of Jackson's suggestion and deception, then you should find the defendant Gardiner not guilty.

(Denied/s/Matthews, Judge)

DEFENDANTS INSTRUCTION NUMBER FIVE

5.

The jury is instructed as a matter of law that in determining whether said statements made by the defendant Gardiner were involuntary, it may consider the purpose of the Narcotic officers in not taking her to a United States Commissioner as directed by the warrant of arrest, the time, manner, and extent and nature of the questioning. In addition the [illegible] consider the conduct of the Special [illegible]employed, the [illegible]

jury may consider the conduct of the Special Employee, the relationship he bore, or purported to bear, if any, to the defendant, the conduct of the prosecutor, in his suggestion of counsel and the purpose of it and the total climate which culminated in her testimony before the Grand Jury, and, unless the jury should find from considering the total atmosphere under which her statements were obtained, that her statements were in fact free and voluntary and not induced or obtained in bargaining atmosphere.

(Denied/s/Matthews, Judge)

DEFENDANTS INSTRUCTION NUMBER SIX

6.

The jury is instructed that while prior convictions of the defendant Gardiner may be considered in connection with her claim of entrapment, the principal and pertinent inquiry is her disposition or predisposition to commit the forbidden acts immediately prior to the time they were actually performed; in this connection her prior disposition to commit forbidden acts should be appraised by the jury in light of their remoteness from the time of the present acts, and her frame of mind and the conduct of Jackson and Broadnax and her reluctance, or lack of it, if any, to commit the acts here concerned.

(Denied/s/Matthews, Judge)

DEFENDANTS INSTRUCTIONS NUMBER SEVEN

7.

The jury is instructed that ordinarily a defendant is not required nor could she be compelled to take the s and as a witness in this cause, but that under the law of the District of Columbia the United States Attorney had the statutory right to dismiss all of the charges against her and compel her to be his witness.

(Denied/s/Matthews, Judge)

PROCEEDINGS

October 12, 1962

THE COURT: Good morning, members of the Jury. Members of the Jury, I have received several notes from your Foreman.

THE COURT: Mr. Johnson, I looked in this record to see if I could find any cross-examination of yours.

MR. JOHNSON: There was none by me.

THE COURT: Well, then, that concludes the reading of this testimony by Mr. Scott.

Now, members of the Jury, you are to retire and resume your deliberations. I think that maybe it would be helpful to the Jury if it would first take up counts two, three and four, in which the defendant Matthews is charged; and then to take up the counts in which the Pannells are charged, and then after you have done that, you might begin with count one. I do think that you should take these up one by one and discuss them and keep in mind what the Court has said to you in the way of instructions. You are to determine the facts, then to apply the law as the Court states it to you.

You may now retire.

MR. MITCHELL: Would Your Honor allow the Jury to remain there until we come to eh bench, please?

THE COURT: Yes.

(At the bench:)

MR. JOHNSON: If Your Honor please, Your Honor instructed that they consider the charges against Gardiner, count by count. Evidently, they may consider under Your Honor's instructions, we had entrapment on all of them --

THE COURT: I am not going to say a word about entrapment, they haven't asked a word about it and I am not going to discuss entrapment.

MR. JOHNSON: Are you going to inquire what instructions they wanted? They asked for further instructions, are you going to ask them what type?

THE COURT: I have already said to them, let me know what they want.

MR. JOHNSON: I don't think you did.

MR. SMITHSON: She said she dis not understand what they wanted and to advise if they wanted anything further.